



# California Regulatory Notice Register

REGISTER 2003, NO. 32-Z

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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## PROPOSED ACTION ON REGULATIONS

*Information contained in this document is published as received from agencies and is not edited by the Office of State Publishing.*

### TITLE 2. SECRETARY OF STATE

#### NOTICE OF PROPOSED RULEMAKING

Notice is hereby given that the Secretary of State intends to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

#### PROPOSED REGULATORY ACTION

Assembly Bill 55, Chapter 1015, Statutes 2002 amended Sections 1502 and 2117 and added Section 1502.5 of the Corporations Code. Subdivision (i) of Section 1502 and subdivision (d) of Section 2117 require domestic stock corporations and qualified foreign corporations to pay a five-dollar (\$5) disclosure fee in addition to any other fees required when filing the statement disclosing specified information concerning its operation. One-half of the fee shall be deposited into the Victims of Corporate Fraud Compensation Fund in the State Treasury established in Section 1502.5. Section 1502.5 further states that the fund shall be administered by the Secretary of State who shall adopt regulations regarding the administration of the fund and the eligibility of victims to receive compensation from the fund. The revenue in the fund shall be used for the sole purpose of providing restitution to the victims of corporate fraud.

The Secretary of State proposes to add Chapter 12, consisting of Sections 22500, 22501, 22502, 22503, 22504, 22505, 22506, 22507, 22508, 22509, 22510, 22511, 22512, 22513, 22514, 22515, 22516, 22517, 22518, and 22519 to Division 7 of Title 2 of the California Code of Regulations. These sections establish the procedures for administering the fund and criteria for eligibility to receive compensation from the fund, including, but not limited to, the following: the definitions of terms used in the Chapter; the formats of the application, notice, response, and decision; the notice requirements; the rights of claimants, judgment debtors, and the Secretary of State; the proration of claims; the appeal procedures; the maximum limit of payments; and the recovery of payments from corporations named as judgment debtors.

#### PUBLIC HEARING

The Secretary of State has scheduled a public hearing on the proposed action. The public hearing will be held on September 23, 2003 from 9:00 a.m. to noon in the Multipurpose Room at the Office of the Secretary of State, 1500 11<sup>th</sup> Street, Sacramento, California. The facility is wheelchair accessible. At the public hearing both oral and written statements, arguments, and contentions shall be permitted.

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Secretary of State. The written comment period closes at 5:00 p.m. on September 23, 2003. Only written comments received at the Office of the Secretary of State by that time shall be considered. Submit written comments to the contact person listed below.

#### AUTHORITY AND REFERENCE

Section 1502.5 of the Corporations Code authorizes the Secretary of State to adopt rules to facilitate the administration of the Victims of Corporate Fraud Compensation Fund and the eligibility of victims to receive compensation from the Victims of Corporate Fraud Compensation Fund. The proposed regulations would implement, interpret and make specific Section 1502.5 of the Corporations Code.

#### INFORMATION DIGEST AND POLICY STATEMENT OVERVIEW

Assembly Bill 55, Chapter 1015, Statutes 2002 amended Sections 1502 and 2117 and added Section 1502.5 of the Corporations Code. Subdivision (i) of Section 1502 and subdivision (d) of Section 2117 require a domestic stock corporations and qualified foreign corporations to pay a five-dollar (\$5) disclosure fee in addition to any other fees required when filing the statement disclosing specified information concerning its operation. One-half of the fee shall be deposited into the Victims of Corporate Fraud Compensation Fund in the State Treasury established in Section 1502.5. Section 1502.5 further states that the fund shall be administered by the Secretary of State who shall adopt regulations regarding the administration of the fund and the eligibility of victims to receive compensation from the fund. The revenue in the fund shall be used for the sole purpose of providing restitution to the victims of corporate fraud.

The Secretary of State has no previous expertise or experience in administering a fund for victims of fraud. Sections 1502, 1502.5 and 2117 of the Corporations Code do not establish the parameters or framework for the fund. In drafting the proposed regulations the Secretary of State looked at the Real Estate Recovery Account administered by the Depart-

ment of Real Estate, which provides compensation to members of the public who have been defrauded by real estate licensees.

The Secretary of State proposes to add Chapter 12, consisting of Sections 22500 through 22519 to Division 7 of Title 2 of the California Code of Regulations. Section 22500 would define the terms used in Chapter 12. Section 22501 would establish the application procedures for payment from the Victims of Corporate Fraud Compensation Fund. Section 22502 would establish the form of the application and define terms for the purpose of applications based on criminal restitution orders. Section 22503 would establish notice requirements and the form of the notice. Section 22504 would establish the requirements and form of the response by a judgment debtor. Section 22505 would establish the addresses at which all parties shall be served with subsequent correspondence and notices after the initial application is submitted to the Secretary of State, served on the judgment debtor, and service of any response by the judgment debtor. Section 22506 would establish the procedures for notifying a claimant of deficiencies in an application, correcting deficiencies, resubmitting the application, and authorizing the Secretary of State to deny an application if the claimant does not respond to the notice of deficiencies. Section 22507 would establish application deadlines that will determine what fiscal year a payment will be made and that the payment of claims shall not exceed the total amount of funds available for the fiscal year in the Victims of Corporate Fraud Compensation Fund. Section 22508 would establish the deadline for the Secretary of State to render a final decision on an application, unless the claimant agrees to extend the deadline, authorize the Secretary of State to deny, grant or enter into a compromise to pay less than the amount in the application, and provide means of investigation and discovery under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code. Section 22509 would establish the procedures and form of the decision rendered by the Secretary of State. Section 22510 would provide the procedures in the event that a judgment debtor files a Writ of Mandamus. Section 22511 would establish the proration where the aggregate valid applications of all aggrieved persons exceed the funds available for distribution from the Victims of Corporate Fraud Compensation Fund. Section 22512 would establish the procedures for a claimant to appeal a decision of the Secretary of State denying claimant's application. Section 22513 would establish procedures whenever a court proceeds upon an application. Section 22514 would establish the rights of a judgment debtor. Section 22515 would establish a limit of a payment to twenty thousand

dollars (\$20,000) for any one transaction. Section 22516 would require a corporation named as a judgment debtor to pay the Victims of Corporate Fraud Compensation Fund the amount of the claim paid out of the fund plus interest at the time the corporation files its next statement of information pursuant to Section 1502 of the Corporations Code and if the corporation does not pay the fund it shall be suspended as set forth in Section 2204, 2205 or 2206 of the Corporations Code. Section 22517 requires the Secretary of State to deposit any sums received pursuant to this Chapter in the State Treasury and credit said sums to the Victims of Corporate Fraud Compensation Fund. Section 22518 would require all of a claimant's rights, title, and interest in a judgment to be assigned to the Secretary of State when the Secretary of State has paid the claimant from the Victims of Corporate Fraud Compensation Fund. Section 22519 would establish that the failure of an aggrieved party to comply with all of the provisions of this Chapter shall constitute a waiver of any rights hereunder.

#### AVAILABILITY OF THE TEXT IN PLAIN ENGLISH

The text of the proposed regulations is available in plain English from the contact person listed below.

#### DISCLOSURE REGARDING THE PROPOSED ACTION

The Secretary of State has made the following determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: The proposed regulations result in a cost to the Secretary of State. Section 1502.5 of the Corporations Code establishes the Victims of Corporate Fraud Compensation Fund, however, the statute is silent as to the parameters and framework of the program. The Legislature charged the Secretary of State with defining the program through the regulatory process. The proposed regulations provide for comprehensive procedures for administering the fund and determining the eligibility of victims to receive compensation from the fund. The Secretary of State currently anticipates the need for three new staff positions to administer the program as it is established in the proposed regulations.
- Cost to any local agency or school district, which must be reimbursed in accordance with Section 17561 of the Government Code: None.
- Other non-discretionary cost or savings imposed upon local agencies: None.



- Cost or savings in federal funding to the state: None.
- Significant, statewide adverse economic impact directly affecting business, including the ability of California business to compete with businesses in other states: Minimal. The Victims of Corporate Fraud Compensation Fund provides an avenue for victims of corporate fraud to satisfy judgments or arbitration awards against corporations that have committed corporate fraud. The Secretary of State shall then pursue corporations named as judgment debtors for reimbursement of all monies paid from the Victims of Corporate Fraud Compensation Fund. The failure to reimburse the fund for claims paid plus interest shall result in the suspension of all corporate powers, rights, and privileges as set forth in Section 2204, 2205 or 2206 of the Corporations Code. A suspended corporation shall not conduct business. The suspension shall end when the corporation submits the reimbursement to the Secretary of State.
- Cost impacts that representative private persons or businesses would necessarily incur in reasonable compliance with the proposed action: Minimal. The costs associated with satisfying the requirements for payments from the Victims of Corporate Fraud Compensation Fund under the proposed regulations are not believed to be any more costly than pursuing other avenues to enforce judgments or arbitration awards against corporations. The Victims of Corporate Fraud Compensation Fund provides a resource for satisfying judgments and arbitration awards. Judgment debtors that do not reimburse the Victims of Corporate Fraud Compensation Fund as required shall have all corporate powers, rights, and privileges suspended as set forth in Section 2204, 2205 or 2206 of the Corporations Code. During the suspension, the corporation shall not be authorized to conduct business. The suspension shall end when the corporation submits the reimbursement to the Secretary of State.
- Adoption of these regulations will not do any of the following: (1) create nor eliminate jobs within California with the exception of the need for three new staff positions to administer the program as it is established in the proposed regulations; (2) create new business or eliminate existing business within California; nor (3) affect the expansion of business currently doing business within California.
- Significant effect on housing costs: None.

#### BUSINESS REPORTING REQUIREMENT

The business reporting requirement is not applicable to the proposed regulations.

#### SMALL BUSINESS DETERMINATION

The proposed regulations would impact any corporation against which a judgment, arbitration award, or criminal restitution order has been entered for conduct constituting intentional fraud and where a claim has been filed with the Secretary of State. As of July 5, 2003 there were 809,812 active corporations in California, including 576,514 domestic stock corporations, 147,159 domestic nonprofit corporations, and 86,139 qualified foreign corporations. The Secretary of State is unable to determine how many of these corporations are defined as small businesses, as all professions, industries, services, and trades with various annual gross receipts are represented in the California corporate community.

#### CONSIDERATION OF ALTERNATIVES

The Secretary of State does not have previous expertise or experience in administering a fund such as the Victims of Corporate Fraud Compensation Fund. Sections 1502, 1502.5 and 2117 of the Corporations Code do not establish the parameters or framework for the fund. In drafting the proposed regulations the Secretary of State looked at laws and regulations governing the Real Estate Recovery Account administered by the Department of Real Estate, which provides compensation to members of the public who have been defrauded by real estate licensees.

The Agency must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective and less burdensome to affected private persons than the proposed action.

#### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Secretary of State shall have the entire rulemaking file available for inspection and copying throughout the rulemaking process. As of the date this notice is published in the Notice Register, the rulemaking file consists of this Public Notice, the Text of the Proposed Regulations and the Initial Statement of Reasons. For further information regarding the inspection of the rulemaking file, contact Janee Marlan at (916) 653-6244 or Dustie Tice, the designated back-up contact, at (916) 653-6873. Copies of the rulemaking file may be obtained at [www.ss.ca.gov/business](http://www.ss.ca.gov/business) or by contacting the contact person listed below.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the close of the public comment period, the Secretary of State may adopt the proposed regulations substantially as described in this notice. If

the Secretary of State makes modifications which are sufficiently related to the originally proposed text, the modified text with changes clearly indicated shall be available to the public for at least 15 days before the Secretary of State adopts the regulations as revised. Please send requests for copies of any modified regulations to the contact person listed below. The Secretary of State will accept written comments on the modified regulations for 15 days after the date on which the modified regulations are made available. Once the final statement of reasons is prepared in accordance with subdivision (a) of Section 11346.9 of the Government Code copies may be obtained at [www.ss.ca.gov/business](http://www.ss.ca.gov/business) or by contacting the contact person listed below.

#### CONTACT PERSON

Direct all written inquiries and requests for copies of the proposed text of the regulations, initial statement of reasons, modified text of regulations, if any, or other information upon which the rulemaking file is based to: Lisa B. Niegel, Regulation Coordinator, Office of the Secretary of State, Business Programs Division, 1500 11<sup>th</sup> Street, 2<sup>nd</sup> Floor, Sacramento, California 95814.

### TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture amended Section 3417, subsection (b), of the regulations in Title 3 of the California Code of Regulations pertaining to Mexican Fruit Fly Interior Quarantine as an emergency action that was effective on June 26, 2003. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than October 25, 2003.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period. Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture may certify that there was compliance with provisions of Section 11346.1 of the Government Code within 120 days of the emergency regulation.

Notice is also given that any person interested may present statements or arguments in writing relevant to the action proposed to the agency officer named below on or before September 22, 2003.

#### INFORMATIVE DIGEST//POLICY STATEMENT OVERVIEW

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry of California and prevent the spread of injurious pests (Food and Agricultural Code Sections 401 and 403). Existing law provides the Secretary may establish, maintain, and enforce quarantine regulations, as he deems necessary, to circumscribe and exterminate or prevent the spread of pests (Food and Agricultural Code, Sections 5301, 5302 and 5322).

This amendment of Section 3417(b) removed approximately 49 square miles surrounding the infestation in the Monterey Park area of Los Angeles County as the area under quarantine for Mexican fruit fly. The fly was eradicated from this area on June 17, 2003; therefore, it is no longer necessary to regulate the movement of hosts and possible carriers of the fly from this area. The area under quarantine surrounding the South Pasadena area of Los Angeles County overlaps the Monterey Park area when the buffer zone extending approximately 4½ miles in each direction from the epicenter was drawn. Eradication has not been declared for the South Pasadena area; therefore, it is necessary to continue to regulate the South Pasadena area. There is also an approximate 117 square mile area surrounding the Valley Center area of San Diego County that will remain under quarantine for Mexican fruit fly. The effect of this amendment is to remove the authority for the State to regulate the movement of hosts of Mexican fruit fly from, into, and within the area under quarantine because the fly has been eradicated from that area and the quarantine is no longer necessary for the protection of California's agricultural industry. There is no existing, comparable federal regulation or statute.

#### COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department of Food and Agriculture has determined that Section 3417(b) does not impose a mandate on local agencies or school districts, except that an agricultural commissioner of a county under quarantine has a duty to enforce Section 3417. No reimbursement is required for Section 3417 under Section 17561 of the Government Code because this amendment removes a portion of Los Angeles County from the area under quarantine from the regulation; therefore, enforcement is no longer necessary. There are no mandated costs associated with the removal of this area (Monterey Park) from the regulation.

The Department also has determined that the amended regulation will involve no additional costs or savings to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local

agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State.

#### EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will not affect housing costs.

#### EFFECT ON BUSINESSES

The Department has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting some California businesses, including the ability of California businesses to compete with businesses in other states.

#### COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### ASSESSMENT

The Department has made an assessment that the proposed amendment to the regulation would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

#### ALTERNATIVES CONSIDERED

The Department of Food and Agriculture must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

#### AUTHORITY

The Department proposes to amend Section 3417(b) pursuant to the authority vested by Sections 407, 5301, 5302 and 5322 of the Food and Agricultural Code.

#### REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 5301, 5302 and 5322 of the Food and Agricultural Code.

#### EFFECT ON SMALL BUSINESS

The amendment of this regulation may affect small businesses.

#### CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed action, location of the rulemaking file,

request for a public hearing, and final statement of reasons may be directed is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room A-316, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: [sbrown@cdfa.ca.gov](mailto:sbrown@cdfa.ca.gov). In his absence, you may contact Kris Peebles at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Stephen S. Brown.

#### INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet website ([www.cdfa.ca.gov/cdfa/pendingregs](http://www.cdfa.ca.gov/cdfa/pendingregs)).

#### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulation in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, when completed the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations amended by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of amendment. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.

### **TITLE 11. COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING**

#### NOTICE OF PROPOSED REGULATORY ACTION:

#### **AMEND COMMISSION DOCUMENT, TRAINING AND TESTING SPECIFICATIONS FOR PEACE OFFICER BASIC COURSES**

Notice is hereby given that the Commission on Peace Officer Standards and Training (POST), pursuant to the authority vested by Sections 13503 of the Penal Code (powers of the Commission on POST) and Section 13506 (authority for Commission on POST to adopt regulations), and in order to interpret, implement and make specific Sections 13510 (authority for the Commission on POST to adopt and amend rules



establishing minimum standards for California local law enforcement officers) and 13510.5 of the Penal Code (authority for the Commission on POST to adopt and amend standards for certain other designated California peace officers), proposes to adopt, amend or repeal regulations in Chapter 2 of Title 11 of the California Code of Regulations.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

At the April 23, 2003 meeting, the Commission approved curriculum revisions to the PC 832 Arrest and Firearms Course. The changes included a redistribution of hours amongst the PC 832 learning domains to reflect the time needed to cover the new material. As a result, subsequent changes need to be made to the minimum hourly requirements for several learning domains in the Level III Course and Level II Module of the Modular Format. The proposed changes ensure that the Regular Basic Course minimum hourly requirement for the learning domains are achieved or exceeded in the Modular Format system, as well as maintains the overall minimum hourly requirements for the entire Modular Format system and its courses.

In addition, proposed changes to the training and testing specifications for Learning Domain #37, Persons with Disabilities, are recommended by POST staff and curriculum consultants (academy instructors and other subject matter experts) as part of an ongoing review of Regular Basic Course content. The curriculum and supporting materials for the learning domain have been updated to reflect emerging training needs, compliance with legislatively mandated subject matter, changes in the law, or to improve student learning and evaluation.

All proposed changes have been reviewed and endorsed by the Consortium of Academy Directors. Upon approval through the Notice of Proposed Regulatory Action Process of the Administrative Procedures Act, the changes are proposed to go into effect January 1, 2004.

#### PUBLIC COMMENT

The Commission hereby requests written comments on the proposed actions. All written comments must be received at POST no later than 5:00 p.m. on September 22, 2003. Written comments should be directed to Kenneth J. O'Brien, Executive Director, Commission on Peace Officer Standards and Training, 1601 Alhambra Boulevard, Sacramento, CA 95816-7083, fax number (916) 227-2801, or email at [ken.obrien@post.ca.gov](mailto:ken.obrien@post.ca.gov)

A public hearing is not scheduled. Pursuant to Government Code Section 11346.8 any interested person, or his or her duly authorized representative,

may request in writing, no later than 15 days prior to the close of the public comment period, that a public hearing be held.

#### ADOPTION OF PROPOSED REGULATIONS

Following the close of the public comment period, the Commission may adopt the proposal substantially as set forth without further notice or may modify the proposal if such modifications remain sufficiently related to the text as described in the Informative Digest. If the Commission makes changes to the language before the date of adoption, the text of any modified language, clearly indicated, will be made available at least 15 days before adoption to all persons whose comments were received by POST during the public comment period, and all persons who request notification from POST of the availability of such changes. A request for the modified text should be addressed to the agency official designated in this notice. The Commission will accept written comments on the modified text for 15 days after the date of which the revised text is made available.

#### TEXT OF PROPOSAL

Copies of the Initial Statement of Reasons and exact language of the proposed action may be obtained by submitting a request in writing to the contact person at the address below. This address also is the location of all information considered as the basis for these proposals. The information will be maintained for inspection during the Commissions' normal business hours (8 a.m. to 5 p.m., Monday through Friday).

Copies of the Final Statement of Reasons, once it has been prepared pursuant to subdivision (a) of Section 11346.9, may be obtained from the address at the end of this notice.

#### ESTIMATE OF ECONOMIC IMPACT

Fiscal impact on Public Agencies including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Costs to any Local Agency or School District for which Government Code Section 17561 Requires Reimbursement: None

Significant Statewide Adverse Economic Impact Directly Affecting California Businesses, including Small Business: The Commission on Peace Officer Standards and Training has made an initial determination that the proposed regulation will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability to compete with businesses in other states, and has found that the proposed amendment of the document, *Training and Testing Specifications for Peace Officer*



*Basic Courses*, will have no effect on California businesses, including small businesses, because the Commission on Peace Officer Standards and Training sets selection and training standards for law enforcement and does not impact California businesses, including small businesses.

**Cost Impacts on Representative Private Persons or Businesses:** The Commission on Peace Officer Standards and Training is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with this proposed action.

**Effect on Housing Costs:** The Commission on Peace Officer Standards and Training has made an initial determination that the proposed regulation would have no effect on housing costs.

#### ASSESSMENT

The adoption of the proposed amendments to this regulation will neither create nor eliminate jobs in the state of California, nor result in the elimination of existing businesses or create or expand businesses in the state of California.

#### CONSIDERATION OF ALTERNATIVES

In order to take this action, the Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

#### CONTACT PERSON

Inquiries concerning written material pertaining to the proposed action should be directed Leah Cherry, Associate Governmental Program Analyst, 1601 Alhambra Boulevard, Sacramento, CA 95816-7083, or by telephone at (916) 227-3891, fax number (916) 227-3895 or e-mail at [leah.cherry@post.ca.gov](mailto:leah.cherry@post.ca.gov). The back-up contact person as well as inquiries concerning the substance of the proposed action/text for the proposed curriculum revisions to the Regular Basic Course should be directed to Julie Hemphill, Associate Analyst, (916) 227-390, fax number (916) 227-6932 or e-mail at [julie.hemphill@post.a.gov](mailto:julie.hemphill@post.a.gov).

#### INTERNET ACCESS

Select **Regulations**, then **Notices of Proposed Regulation Changes** to view proposed regulatory actions on POST's home page ([www.post.ca.gov](http://www.post.ca.gov)).

## TITLE 13. AIR RESOURCES BOARD

### NOTICE OF PUBLIC HEARING TO CONSIDER THE ADOPTION OF EXHAUST AND EVAPORATIVE EMISSION CONTROL REQUIREMENTS FOR SMALL OFF-ROAD ENGINES LESS THAN OR EQUAL TO 19 KILOWATTS AND EQUIPMENT THAT USE SUCH ENGINES

The Air Resources Board (the Board or ARB) will conduct a public hearing at the time and place noted below to consider amendments to the small off-road engine regulations and test procedures, and adoption of evaporative emission standards, certification procedures, and evaporative test procedures for small off-road engines.

DATE: September 25, 2003

TIME: 9:00 a.m.

PLACE: South Coast Air Quality  
Management District  
Auditorium  
21865 East Copley Drive  
Diamond Bar, CA 91765-4182

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., September 25, 2003, and may continue at 8:30 a.m., September 26, 2003. This item may not be considered until September 26, 2003. Please consult the agenda for the meeting, which will be available at least 10 days before September 25, 2003, to determine the day on which this item will be considered.

If you have special accommodation or language needs, please contact the ARB's Clerk of the Board at (916) 322-5594 or [sdorais@arb.ca.gov](mailto:sdorais@arb.ca.gov) as soon as possible. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

#### INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

**Sections Affected:** Proposed adoption of sections 2405.1, 2405.2, and 2405.3, 2750, 2751, 2752, 2753, 2754, 2755, 2756, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, and 2473, title 13, California Code of Regulations (CCR). Proposed adoption of the incorporated "California Exhaust Emission Standards and Test Procedures for 2005 and Later Small Off-Road Engines, and the incorporated "Small Off-Road Engine Evaporative Emission Test Procedures, TP-901 and TP-902" and "Small Off-Road

Engine Evaporative Emissions Control System Certification Procedures, CP-901 and CP-902.” Proposed amendments to sections 2400, 2401, 2403, 2404, 2405, 2407, 2408, and 2409, title 13, CCR. Proposed amendments to the incorporated “California Exhaust Emission Standards and Test Procedures for 1995 and later Small Off-Road Engines,” as last amended January 28, 2000, title 13, CCR.

### BACKGROUND

Health and Safety Code sections 43013 and 43018 direct the ARB to set emission control requirements for off-road mobile source categories. These categories include marine vessels, locomotives, utility engines, off-road motorcycles, and off-highway vehicles. The small engine category is covered by this mandate.

Small off-road spark-ignition engines run on gasoline or an alternative fuel such as liquefied petroleum gas (LPG) or compressed natural gas (CNG), and are rated at or below 19 kilowatts (25 horsepower). Small off-road engines are used to power a broad range of lawn and garden equipment including lawn mowers, leaf blowers, and lawn tractors, as well as generators and other small industrial equipment.

In December 1990, the Board approved exhaust emission control regulations for small off-road engines. (See title 13, CCR, sections 2400–2409 and the documents incorporated therein). The small off-road engine category was the first off-road category subject to emission control regulations because its emissions impact was significant and because a court order required Board action on the category by January 1991. The small off-road engine regulations apply to engines produced on or after January 1, 1995. On July 5, 1995, the United States Environmental Protection Agency (U.S. EPA) approved California’s authorization request; approval allows the state to enforce the regulations.

The current small off-road engine regulations include exhaust emission standards, test procedures, and provisions for warranty and production engine compliance programs. Since its initial adoption the small off-road engine regulations have been amended several times, with the most recent amendment occurring in 1998. The current regulations consist of two tiers of emission standards. Tier 1 standards became effective in 1995, and Tier 2 standards began implementation with the 2000 model year. Exhaust emission standards have been established for hydrocarbons (HC), oxides of nitrogen (NOx), carbon monoxide (CO), and particulate matter (PM)(for two-stroke engines only). Additionally, the regulations separate small engines into three displacement categories: up to and including 65 cubic centimeters (cc), >65 to <225 cc, and 225 cc and above. Engines 65 cc

and below are typically used in handheld applications, such as chainsaws and trimmers. Because of their unique operation, engine weight and size limitations, these engines are allowed to comply with a less stringent set of emission standards. Engines above 65 cc are typically used in nonhandheld applications, such as lawn mowers and portable generators. These engines meet more stringent emission levels due to the engine designs and available emission control systems.

### PROPOSED ACTIONS

Staff is proposing to amend the existing California exhaust emission regulations for small off-road spark-ignition engines to include more stringent exhaust standards as well as proposing new regulations to control evaporative emissions from small engine equipment.

Currently the small off-road engine regulations apply to engines below 25 horsepower (hp). The staff proposes to revise the regulations to harmonize with the U.S. EPA unit power designation and adopt the use of kilowatt (kW) as the unit of power for small off-road engines. The result is that the small off-road engine regulations would apply to engines that produce a gross power at or below 19 kW.

The original 65 cc engine class cut point was based upon the product line and market demands for handheld engines at the time the displacement categories were proposed (i.e., 1998). However, the natural progression of the product for handheld engines is moving toward larger displacement handheld engines. To address this market shift, staff proposes to modify the upper boundary of this smaller engine class to include engines up to and including 80 cc, beginning in 2005.

Staff proposes a new set of exhaust emission standards (Tier 3) for new small off-road spark-ignition engines. The Tier 3 standards would further limit exhaust emissions and are based on available engine designs and the most technologically feasible and cost-effective control strategies.

In March 2000, the U.S. EPA finalized new federal exhaust emission standards for handheld small off-road engines. The federal rule for handheld small engines includes a HC+NOx emission standard for engines below 50 cc that becomes more stringent over several years and, beginning with the 2005 model year, is more stringent than the current California HC+NOx emission standard for these same engines. Staff thus recommends adopting the federal HC+NOx exhaust emission standard for engines below 50 cc.

The staff also proposes to adopt new Tier 3 standards for engines above 80 cc. These new exhaust emission standards are based on reductions achievable with the use of a catalyst that would reduce HC+NOx by 50 percent at the end of useful life. Staff proposes to implement the new catalyst-based standards with the 2007 model year for engines >80 – <225 cc, and with the 2008 model year for engines 225 cc and above.

The proposed exhaust emissions standards are presented in Table 1, as are the existing standards for comparative purposes.

Table 1

Adopted & Proposed Exhaust Emissions Standards for Small Off-Road Engines

Year	Displacement	Standards g/kW-hr [g/bhp-hr]		
		HC+NOx	CO	PM*
Adopted Tier 2	≤ 65 cc	72 [54]	536 [400]	2.0 [1.5]
Adopted Tier 2	> 65 to < 225 cc	16.1** [12.0]	549 [410]	N/A
	≥ 225 cc	12.1 [9.0]	549 [410]	N/A
2005 and later (Proposed Tier 3)	≤ 50 cc	50 [37]	536 [400]	2.0 [1.5]
	> 50 to ≤ 80 cc	72 [54]	536 [400]	2.0 [1.5]
2007 and later (Proposed Tier 3)	> 80 to < 225 cc	8.0 [6.0]	549 [410]	N/A
2008 and later (Proposed Tier 3)	≥ 225 cc	6.0 [4.5]	549 [410]	N/A

\* Applicable to two-stroke engines only.

\*\* For 2002–2005 model years, vertical shaft engines are allowed to meet 16.1 g/kW-hr HC+NOx and 467 g/kW-hr CO emission standards without a durability demonstration.

In addition to new exhaust emission requirements, staff is proposing new regulations to control evaporative emissions from small off-road equipment less than or equal to 19 kW. Currently, there are no regulations that control evaporative emissions from small off-road equipment. If left uncontrolled, it is estimated that the statewide evaporative emissions from all small engine equipment will be 52 tons per day of HC in 2010.

The proposed evaporative emission standards are presented in Table 2 below.

Table 2

Proposed Evaporative Emission Standards for Small Off-Road Engine Equipment

Year	Displacement	Standard(s)
2007 and later	Small Engine Equipment ≤ 80 cc	Fuel tank permeation emissions shall not exceed 2.0 grams per square meter per day. Equipment that uses a structurally integrated nylon tank is exempt.
2007 and later	All Walk-Behind Mowers > 80 cc to < 225 cc	Diurnal emissions shall not exceed 1.0 gram hydrocarbons per day.
2007 and later	All Small Engine Equipment > 80 cc to < 225 cc	Diurnal emissions shall not exceed 0.21* Tank Volume+0.95 grams hydrocarbons per day.
2008 and later	All Small Engine Equipment ≥ 225 cc	Diurnal emissions shall not exceed 2.0 grams hydrocarbons per day.

The staff proposal establishes performance standards for engines and equipment. Staff is proposing to set one permeation performance standard applicable to fuel tanks on all small off-road engine equipment less than or equal to 80 cc. Staff is also proposing three diurnal evaporative emission performance standards for small off-road engine equipment with displacements greater than 80 cc. The proposed evaporative regulations also include:

- options that allow engine or equipment manufacturers to certify evaporative emission control systems;
- labeling requirements to allow for the quick identification of equipment subject to the proposed regulations; and
- test methods that ARB and industry would use to determine compliance with the permeation and diurnal evaporative emission performance standards.

To continue support of incentive programs that encourage the use of engines that go beyond mandatory emission standards, the staff proposes to implement voluntary optional low exhaust emission standards for small engines. An engine certified to these standards will be classified as a “Blue Sky Series” Engine. The optional standards represent a reduction of approximately 50 percent below the proposed Tier 3 levels for HC+NOx.



The ARB and U.S. EPA each have exhaust emissions test procedures in place which manufacturers must adhere to when certifying to the applicable State or federal exhaust emission standards for small engines. In order to ease the burden of certifying engine families with multiple units to both the federal and California emission standards, staff proposes to more fully harmonize with the federal small engine test procedures (40 Code of Federal Regulations, part 90, subparts A, B, D, and E and corresponding appendices) to be used for 2005 and later model year engines when certifying to California's exhaust emission standards. The current small engine exhaust emission regulations require that manufacturers conduct a durability demonstration as part of the certification process. For each engine family manufacturers are able to choose an emissions durability period of either 125, 250, or 500 hours for the larger (nonhandheld) engines. The federal rule also includes a 1000 hour durability option for nonhandheld engines greater than or equal to 225 cc, and in the spirit of alignment, staff proposes to adopt the 1000 hour durability option. Also, the federal rule requires manufacturers to report emission-related defects. Staff proposes a similar requirement such that a manufacturer must report to ARB emission-related defects affecting a given class or category of engines. If ARB determines that a substantial number of any class or category of engines do not conform to the regulations when in actual use, ARB will notify the manufacturer and require the manufacturer to submit a plan to resolve the nonconformity of the engines.

The staff also proposes to make other non-substantive modifications to the regulations and test procedures to clarify or simplify existing language.

#### COMPARABLE FEDERAL REGULATIONS

The U.S. EPA has exhaust emission control regulations for small off-road engines (Title 40, Code of Federal Regulations, Part 90). Those regulations are similar to the California regulations that predated them. The staff has made every effort to minimize conflicts with the current U.S. EPA rule, while retaining specific features needed by California. Those efforts include aligning the structure of the exhaust emission test procedures wherever justifiable. However, the proposal includes several differences from the current U.S. EPA regulations, including more stringent exhaust emissions standards, and evaporative emission standards.

The staff analysis of the proposed regulations indicates that they will reduce emissions from ozone precursors in a cost-effective manner, beyond what would be accomplished by the existing federal regulations. Thus, the cost of the separate California program is justified by the benefit to human health,

public welfare, and the environment. In addition, Health and Safety Code sections 43013 and 43018 authorize the differences from the federal program.

#### BENEFITS OF THE PROPOSAL

The intent of the proposed regulations is to reduce emissions from small engines and equipment utilizing technologies that are technologically feasible and cost-effective. By 2010, it is estimated that the proposed emission standards will result in statewide emission reductions of 3.2 tons per day of NOx emissions and 18.5 tons per day of HC emissions. In 2020, the estimated reductions increase to 7.5 and 42.0 for NOx and HC, respectively. Staff estimates that a 2010 South Coast Air Basin HC+NOx reduction of 9.0 tons per day will be realized.

#### AVAILABILITY OF DOCUMENTS AND CONTACT PERSONS

The Board staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the Proposed Regulatory Action, which includes a summary of the environmental impacts of the proposal.

Copies of the Staff Report and the full text of the proposed regulatory language, in underline and strike-out format to allow for comparison with the existing regulations, may be accessed on the ARB's web site listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Environmental Resources Center, 1<sup>st</sup> Floor, Sacramento, CA 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing September 25, 2003.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the ARB's web site listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Mr. Manjit Ahuja, at (916) 327-8528 or mahuja@arb.ca.gov, or Ms. Jackie Lourenco, at (626) 575-6676 or jlourenc@arb.ca.gov.

Further, the agency representative and designated back-up contact persons to who nonsubstantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

If you are a person with a disability and desire to obtain this document in an alternative format, please contact the Air Resources Board ADA Coordinator



at (916) 323-4916, or TDD (916) 324-9531, or (800) 700-8326 for TDD calls outside the Sacramento area.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at [www.arb.ca.gov/regact/sore03/sore03.htm](http://www.arb.ca.gov/regact/sore03/sore03.htm).

#### COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action will not create costs or savings to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, or other nondiscretionary savings to state or local agencies.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on representative private persons or businesses. The ARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The Executive Officer has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Staff Report (ISOR).

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action will have some impact, although not significant, on small businesses that buy and sell lawn and garden equipment. During the initial years of implementation, the increased cost of equipment may lead to a slight drop in demand that could result in lower profits for small businesses.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the ARB's Executive Officer has found that the reporting requirements of the regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

Before taking final action on the proposed regulatory action, the Board must determine that no alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

#### SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received **no later than 12:00 noon, September 24, 2003**, and addressed to the following:

Postal mail is to be sent to:

Clerk of the Board  
Air Resources Board  
1001 "I" Street, 23<sup>rd</sup> Floor  
Sacramento, California 95814

Electronic mail is to be sent to: [SORE03@listserv.arb.ca.gov](mailto:SORE03@listserv.arb.ca.gov), and received at the ARB **no later than 12:00 noon, September 24, 2003**.

Facsimile transmissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB **no later than 12:00 noon, September 24, 2003**.

The Board requests but does not require that 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The ARB encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

#### STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under that authority granted in Health and Safety Code Sections 39600, 39601, 43013, 43018, 43101, 43102, and 43104. This action is proposed to implement, interpret, and make specific Health and Safety Code Sections 43013, 43017, 43018, 43101, 43102, 43104, 43150-43154, 43205.5 and 43210-43212.

#### HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act,

Title 2, Division 3, Part 1, Chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such event the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, Air Resources Board, 1001 "I" Street, Environmental Services Center, 1<sup>st</sup> Floor, Public Information Office, Sacramento, CA 95814, (916) 322-2990.

## **TITLE 18. BOARD OF EQUALIZATION**

### **NOTICE IS HEREBY GIVEN**

The State Board of Equalization, pursuant to the authority vested in it by section 15606(a) of the Government Code, proposes to promulgate Regulation 1598.1, Diesel Fuel Prepayment Exemption, in Title 18, Division 2, Chapter 4, of the California Code of Regulations, relating to sales and use tax. A public hearing on the proposed regulation will be held in Room 121, 450 N Street, Sacramento, at 9:30 a.m., or as soon thereafter as the matter may be heard, on September 24, 2003. At the hearing, any person interested may present statements or arguments orally or in writing relevant to the proposed regulatory action. The Board will consider written statements or arguments if received by September 24, 2003.

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Current law, Revenue and Taxation Code section 6480.1, provides that retailers of diesel fuel are required to prepay sales tax on sales of diesel fuel sold to them by sellers. The Legislature passed Senate Bill (SB) 1901 (Stats. 2002, Ch. 446), which, operative October 9, 2002, enacted RTC section 6480.3 to provide an exemption, under specified conditions, from the prepayment of sales tax on certain sales of diesel fuel being purchased for resale to persons engaged in farming activities or food processing as defined by Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*.

Proposed Regulation 1598.1, Diesel Fuel Prepayment Exemption, is proposed to be promulgated to interpret, implement and make specific Revenue and Taxation Code section 6480.3. The regulation is proposed to define terms used in Senate Bill (SB) 1901; clarify criteria under which a seller of diesel fuel may accept a diesel fuel prepayment exemption certificate; provide guidelines on the form of a diesel fuel prepayment exemption certificate; clarifies a retailer's liability for tax when the diesel fuel is resold; explain the penalties for misuse of a diesel fuel prepayment exemption certificate; and include an operative date of October 9, 2002, which is based on the operative date of the enabling statute.

### **COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS**

The State Board of Equalization has determined that the proposed regulation does not impose a mandate on local agencies or school districts. Further, the Board has determined that the proposed regulation will result in no direct or indirect cost or savings to any State agency, any cost to local agency or school district that are required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code or other nondiscretionary cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

### **EFFECT ON BUSINESS**

Pursuant to Government Code section 11346.5(a)(8), the Board of Equalization made an initial determination that the adoption of proposed Regulation 1598.1 will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete in other states.

The adoption of the proposed regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The proposed regulation may affect small business.

### **COST IMPACT ON PRIVATE PERSON OR BUSINESSES**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### **SIGNIFICANT EFFECT ON HOUSING COST**

No significant effect.

### **FEDERAL REGULATIONS**

Proposed Regulation 1598.1 has no comparable Federal regulations.

#### AUTHORITY

Section 7051 Revenue and Taxation Code.

#### REFERENCE

Section 6480.3 Revenue and Taxation Code.

#### CONTACT

Questions regarding the substance of the proposed regulation should be directed to Ms. Mariflor Jimenez (916) 324-2952, at 450 N Street, Sacramento, CA 95814, e-mail [Mariflor.Jimenez@boe.ca.gov](mailto:Mariflor.Jimenez@boe.ca.gov) or MIC:50, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0050.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984, e-mail [Diane.Olson@boe.ca.gov](mailto:Diane.Olson@boe.ca.gov) or Ms. Karen Anderson, Contribution Disclosures Analyst, telephone (916) 327-1798, e-mail [Karen.Anderson@boe.ca.gov](mailto:Karen.Anderson@boe.ca.gov) or by mail at State Board of Equalization, Attn: Diane Olson or Karen Anderson, MIC:80, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080.

#### ALTERNATIVES CONSIDERED

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective and less burdensome to affected private persons than the proposed action.

#### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared a statement of reasons and an underscored version (express terms) of the proposed regulation. Both of these documents and all information on which the proposal is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation are available on the internet at the Board's website <http://www.boe.ca.gov>.

#### AVAILABILITY OF FINAL STATEMENT OF REASONS

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the proposed regulation. It is also available for your inspection at 450 N Street, Sacramento, California.

#### ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may in accordance with law adopt the proposed regulation if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of any modified regulation will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Ms. Olson. The State Board of Equalization will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.

## TITLE 22. DEPARTMENT OF HEALTH SERVICES

#### ACTION

Notice of Emergency Rulemaking  
Title 22, California Code of Regulations

#### SUBJECT

Authorization of Prosthetic and Orthotic Appliances  
**R-43-00E**

#### PUBLIC PROCEEDINGS

Notice is hereby given that the California Department of Health Services will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions relevant to the action described in this notice.

#### COMMENTS

Any written statements, arguments or contentions (hereafter referred to as comments) must be received by the Office of Regulations, Department of Health Services, by 5 p.m. on September 22, 2003, which is hereby designated as the close of the written comment period. It is requested but not required that written comments sent by mail or hand-delivered be submitted in triplicate.

**Note: DHS has moved to a new location. The U.S. Postal Service requires the use of the P.O. Box for mailed items.**

Hand Delivery: Department of Health Services  
Office of Regulations  
1501 Capitol Avenue  
MS 0015  
Sacramento, CA



Mail Delivery: Department of Health Services  
Office of Regulations  
MS 0015  
P.O. Box 942732  
Sacramento, CA 94234-7320

Comments may be transmitted by email ([regulation@dhs.ca.gov](mailto:regulation@dhs.ca.gov)), through the "Making Comments" link on the Department website at <http://www.dhs.ca.gov/regulation/>, by regular mail, or by FAX to (916) 440-7714. Comments must be received before 5:00 p.m. on September 22, 2003, the close of the written comment period. All comments, including email, website, or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes in the regulation text on which additional comments may be solicited.

#### CONTACTS

**In any of the following inquiries, please identify the action by using the Department regulation control number, R-43-00E.**

Materials regarding the proposed regulations (including this public notice, the proposed regulations, and the Initial Statement of Reasons) that are available via the Internet may be accessed at <http://www.dhs.ca.gov/regulation/> and then by clicking on the "Search Regulations" button.

1. In order to request a copy of this regulation package be sent to you, please call (916) 440-7695 or send an email to: [regulation@dhs.ca.gov](mailto:regulation@dhs.ca.gov).
2. Inquiries regarding the substance of the emergency regulations described in this notice may be directed to Phyllis Muchmore, R.N. of Medi-Cal Benefits Branch at (916) 657-1416.
3. All other inquiries concerning the action described in this notice may be directed to Marylyn Willis, R.N. of the Office of Regulations, or to the designated backup contact person, Barbara Gallaway, R.N., MSN; both can be reached at (916) 440-7695.

Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Federal law, Section 1902(a)(30)(A) of the Social Security Act [42 U.S.C. 1396a(a)(30)(A)], requires state Medicaid agencies to include in their State Plans the methods and procedures that will be employed to safeguard against unnecessary utilization of care and

services. Federal regulation, Section 456.3, Title 42, Code of Federal Regulations, requires state Medicaid agencies to implement a statewide surveillance and utilization control program that (a) safeguards against unnecessary or inappropriate use of Medicaid services and against excess payments; (b) assesses the quality of services; (c) provides for the control of the utilization of all services provided under the plan; and (d) provides for the control of the utilization of inpatient services.

Welfare and Institutions (W&I) Code, Section 14132 and Title 22, California Code of Regulations (CCR), Section 51315 specify that prosthetic and orthotic (P&O) appliances are a covered benefit under the Medi-Cal program, subject to utilization controls. As authorized under W&I Code, Section 14133(a), the Department of Health Services (Department) has elected to require prior authorization of requests for service based on program cost thresholds as the method to control utilization of P&O appliances, and to restrict the billing of certain P&O appliances to specific "By Report" codes. The Department has also decided to restrict the providers who may provide these items under the Medi-Cal program.

This regulatory action is required to ensure adequate utilization review while ensuring appropriate access to P&O appliances, by preventing over-billing for non-medically necessary P&O appliances. The Department has determined by tracking the billing practices of P&O providers that billing thresholds have been implemented in such a manner as to allow numerous appliances to be provided and paid for under the Medi-Cal program that were not medically necessary. Tightening up the prior authorization and billing processes will prevent these practices.

This regulatory action makes the following changes to Title 22, CCR:

- (1) Amends Section 51315 to require a signed prescription from a physician, podiatrist, or dentist, to delete outdated information, to clarify when prior authorization is required and when prosthetic and orthotic appliances may be billed without prior authorization, and to define "90-day period of time."
- (2) Amends Section 51515 to:
  - Delete language to indicate that single asterisk codes no longer exist. As a result of the Department's focus on fraud and abuse, the Director's Office has decided to restrict the providers who may provide these items under the Medi-Cal program.
  - Indicate that double asterisk codes mean that pharmacists may furnish and bill for these codes only when specified conditions are met. This amended subsection is for clarification only; no new policy is intended.



- Add language to clarify who may bill for the non-double-asterisked procedure codes that are displayed in the regulation text, and to delete certain codes (plastic heel stabilizers, foot inserts, arch supports and gradient compression stockings): as a result of the Department's focus on fraud and abuse, the Director's Office has decided that these deleted codes will be available only under "By Report" procedure codes, which means that they require authorization/manual claim review prior to reimbursement. This process precludes direct billing for these items and ensures that medical necessity will first be determined by a Medi-Cal consultant.

#### AUTHORITY

Sections 10725, 14021.3, 14021.5, 14043.75, 14105, 14105.2, 14124.5, 14132, 14132.76, 14132.765 and 14133, Welfare and Institutions Code; Chapter 328, Statutes of 1982; Chapter 1381, Statutes of 1990; and Section 78, Chapter 146, Statutes of 1999.

#### REFERENCE

Sections 14053, 14103.7, 14105, 14105.2, 14132(k), 14132.76, 14132.765, 14133 and 14133.1(c), Welfare and Institutions Code; Statutes of 1984, Chapter 258, Items 4260-106-001 and 890; and Statutes of 1985, Chapter 111, Items 4260-106-001 and 890.

#### FISCAL IMPACT ESTIMATE

- Fiscal Effect on Local Government: None
- Fiscal Effect on State Government:
  - FY 2002-03: Savings of \$1,868,000 (Total \$3,736,000).
  - Annual ongoing: Savings of \$11,203,000 (Total \$22,406,000).
- Fiscal Effect on Federal Funding of State Programs:
  - FY 2002-03: Savings of \$1,868,000 (Total \$3,736,000).
  - Annual ongoing: Savings of \$11,203,000 (Total \$22,406,000).
- All cost impacts, known to the Department at the time the notice of emergency action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the emergency action: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the emergency action.
- Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None

#### DETERMINATIONS

The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has made an initial determination that the regulations would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the regulations would not significantly affect the following:

- (1) The creation or elimination of jobs within the State of California.
- (2) The creation of new businesses or the elimination of existing businesses within the State of California.
- (3) The expansion of businesses currently doing business within the State of California.

The Department has determined that the regulations would affect small business. The regulations clarify the cost thresholds for the authorization of prosthetic and orthotic appliances, and restrict the billing of some items to the "By Report" process. This may increase the number of Treatment Authorization Request submissions required for the authorization of prosthetic and orthotic appliances. Some physician offices as well as some prosthetic and orthotic providers are small businesses.

The Department has determined that the regulations will have no impact on housing costs.

#### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS

The Department has prepared and has available for public review an initial statement of reasons for the emergency regulations, all the information upon which the emergency regulations are based, and the text of the emergency regulations. A copy of the initial statement of reasons and a copy of the text of the emergency regulations are available upon request by writing to the Office of Regulations at the address noted above, which will also be the location of public records, including reports, documentation, and other material related to the proposed regulations (the rulemaking file). Additionally, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations at the address noted above. Materials regarding the emergency regulations that are available via the Internet may be accessed at <http://www.dhs.ca.gov/regulation/>.

**AVAILABILITY OF CHANGED  
OR MODIFIED TEXT**

The full text of any regulation which is changed or modified from the express terms of the emergency action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

**ADDITIONAL STATEMENTS AND COMMENTS**

In accordance with Government Code Section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action was taken, or would be as effective and less burdensome to affected private persons, than the emergency action.

No hearing has been scheduled; however, any interested person or his or her duly authorized representative may request, in writing, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code Section 11346.8.

Sign language interpreting services at a public hearing or other reasonable accommodation will be provided upon request. Such request should be made no later than 21 days prior to the close of the written comment period, and addressed to the Office of Civil Rights within the Department of Health Services, by phone (916-440-7370); FAX (916-440-7395); TDD (916-440-7399); or email (civilrights-ra@dhs.ca.gov).

**TITLE 22. EMPLOYMENT  
DEVELOPMENT DEPARTMENT**

**Amendment of Title 22,  
California Code of Regulations, Section 4304.3**

**HOME HEALTH CARE INDUSTRY  
NOTICE OF PROPOSED RULEMAKING**

The Employment Development Department (Department) proposes to amend California Code of Regulations (CCR), title 22, section 4304.3, for the purpose of replacing an obsolete definition of the term "occupational therapist" with the current definition as provided in the Business and Professions Code.

The Department will adopt these proposed amendments after considering all comments, objections, or recommendations regarding the proposed action.

**INFORMATIVE DIGEST/POLICY  
STATEMENT OVERVIEW**

Senate Bill (SB) 1046 (Chapter 697, Statutes of 2000) amended the Business and Professions Code to require that occupational therapists must be licensed

by the Board of Occupational Therapy starting January 1, 2003. Therefore, the definition of an occupational therapist contained in CCR, title 22, section 4304.3, is no longer consistent with the definition contained in the Business and Professions Code. The amendment of this regulation is necessary in order to maintain consistency with the amended statutes and avoid confusion. Section 4304.3 is also being amended to make technical corrections. There are references in this regulation to the California Administrative Code. However, Government Code section 11344.9(a) provides that California Administrative Code now means "California Code of Regulations." In addition, the section number of this regulation should be changed from "4304.3" to "4304-3" in order to be consistent with the numbering system used in CCR, title 22.

**AUTHORITY AND REFERENCE**

Authority: Sections 305 and 306, Unemployment Insurance Code.

Reference: Sections 621, 13004, 13005 and 13020, Unemployment Insurance Code.

**FISCAL IMPACT**

**Anticipated costs or savings in federal funding to the State:** None

**Anticipated costs or savings to any State Agency:** None

**Anticipated costs or savings to any local agency or school district:** None

**Significant statewide adverse economic impact:** The Department does not anticipate this regulatory action will result in any costs to the federal government, to State government, to local county governments, to private individuals, or to businesses and small businesses. Thus, no costs were shown on the Economic and Fiscal Impact Statement.

The Department has made an initial determination that the proposed amendments will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states. The Department has determined that the proposed amendments will not affect the creation or elimination of jobs within the State of California; the creation of new businesses or the elimination of existing businesses within the State of California; or the expansion of businesses currently doing business within the State of California.

**The costs impact on representative persons or businesses:** The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**Anticipated impact on housing costs:** The proposed amendments will have no effect on housing costs.

**Anticipated nondiscretionary costs or savings imposed upon local agencies:** None

#### SMALL BUSINESS IMPACT

The Department has determined the proposed amendments will not affect small businesses. The proposed amendments to the regulation will assure that the definition of an occupational therapist used in the regulation is the same as the definition used in the Business and Professions Code.

#### LOCAL MANDATE DETERMINATION

The Department has determined that these proposed amendments will not impose any new mandates on school districts or other local governmental agencies or any mandates which must be reimbursed by the State pursuant to Part 7 (commencing with section 17500), Division 4 of the Government Code.

#### CONSIDERATION OF ALTERNATIVES

In accordance with section 11346.5(a)(13) of the Government Code, the Department must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory amendments.

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments on the proposed action to Laura Colozzi via U.S. mail, e-mail, or fax (see U.S. mail and e-mail addresses and fax number indicated below). E-mail comments must include true name and mailing address of the commentor. **Written comments submitted via U.S. mail, e-mail, or fax, must be received by the Department no later than September 22, 2003, at 5 p.m.** Please submit any written comments before that time. The Department cannot accept written comments after the close of the public comment period.

#### CONTACT PERSONS

Inquiries or comments should be directed to Laura Colozzi as follows:

Mailing address: Laura Colozzi  
Employment Development  
Department  
P.O. Box 826880  
Legal Office, MIC 53  
Sacramento, CA 94280-0001

(Street address) 800 Capitol Mall, Room 5020  
Legal Office, MIC 53  
Sacramento, CA 95814

Telephone No.: (916) 654-7712  
Fax No.: (916) 654-9069  
E-Mail Address: [eddlegal@edd.ca.gov](mailto:eddlegal@edd.ca.gov)

**Note:** In the event Laura Colozzi is unavailable, inquiries should be directed to the following backup contact persons at the same address as noted above:

Name: Penny Ayers  
Telephone No.: (916) 654-8410

Questions regarding the substance of the proposed regulatory action should be directed to:

Name: Barbara Kaufman  
Telephone No.: (916) 654-8410

#### INTERNET WEBSITE ACCESS

The Department has posted on its Internet website <http://www.edd.ca.gov> materials regarding the proposed regulatory action. Select "Proposed EDD Regulations."

#### PUBLIC HEARING

No public hearing has been scheduled on the proposed action. However, if any person desires to submit oral comments, the Department will schedule a public hearing upon that person's written request. **Such request must be received no later than 15 days prior to the close of the written comment period which is 5 p.m. on September 22, 2003.** A request for hearing can be made by contacting the persons noted above.

#### MODIFICATION OF PROPOSED ACTION

If the Department makes any additional changes based on public testimony, those changes (other than nonsubstantial or solely grammatical modifications) will be made available for public comment for at least 15 days before they are adopted. Copies of any additional changes regarding the proposed regulatory action will be mailed to all persons who testified or submitted written comments at the public hearing (if one is scheduled); whose comments were received by the agency during the public comment period; and who requested notification from the agency of the availability of such changes.

#### FINAL STATEMENT OF REASONS

After the close of the 45-day public comment period, the Department will summarize and respond to all public comments in a written final statement of reasons. To obtain a copy of the final statement of reasons, contact the persons noted above, or access the Department's Internet website at <http://www.edd.ca.gov>.



#### FURTHER INFORMATION

The Department has prepared and has available for review, upon request, the text of the proposed regulatory amendments discussed in this notice, written in plain English; a statement of reasons setting forth the purpose of the amendments; and the information upon which the Department relied in proposing the amendments. (If you received this notice by mail, a copy of the text of the proposed amendments and the statement of reasons were enclosed.) To obtain a copy, contact the persons noted above, or access the Department's Internet website at <http://www.edd.ca.gov>.

All the information upon which the proposed amendments are based is contained in the rulemaking file, which is available for public review. For inquiries regarding the rulemaking file or the regulations' process, contact the persons noted above.

### **TITLE 24. CALIFORNIA ENERGY COMMISSION**

#### NOTICE OF PROPOSED ACTION

##### REVISIONS TO THE CALIFORNIA BUILDING ENERGY EFFICIENCY STANDARDS CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 1 and PART 6 (CALIFORNIA ENERGY CODE)

##### 2005 BUILDING ENERGY EFFICIENCY STANDARDS

Notice is hereby given that the California Energy Commission (Commission) proposes to adopt changes to the Building Energy Efficiency Standards contained in the California Code of Regulations (CCR), Title 24, Part 6 (also known as the California Energy Code) and associated administrative regulations in Part 1. The proposed Standards revisions have been termed the "2005 Building Energy Efficiency Standards" to reflect the Commission's expectation that they would go into effect in 2005 along with other triennial changes to the California Codes containing building standards.

#### PUBLIC COMMENT PERIOD

The Commission's Energy Efficiency Committee will hold a public hearing at the following time, date, and address to receive public comments on the proposed action. At this hearing, any person may present statements or arguments relevant to the proposed regulatory action summarized below. The proposed language (45 Day Language Express Terms) is posted on the Commission's website at

[www.energy.ca.gov/2005\\_standards/rulemaking](http://www.energy.ca.gov/2005_standards/rulemaking) and is also available from the Commission's Residential Buildings and Appliance Standards Office (contact persons are listed later in this Notice).

#### PUBLIC HEARING BEFORE THE ENERGY EFFICIENCY COMMITTEE

Thursday, September 4, 2003  
10 a.m.

CALIFORNIA ENERGY COMMISSION  
Hearing Room A  
1516 Ninth Street  
Sacramento, California  
(Wheelchair Accessible)

The Energy Efficiency Committee may hold another hearing after that date if it deems necessary. Written comments will be accepted regarding the proposed changes until the adoption date listed below.

The hearing before the full Energy Commission for final adoption of the 45 Day Language Express Terms will be held on the date below unless the Commission decides to make substantive changes to the Express Terms through 15 Day Language, in which case the public hearing will be continued to a later noticed date.

#### PROPOSED ADOPTION DATE—FULL COMMISSION HEARING

Wednesday, October 8, 2003  
10 a.m.

CALIFORNIA ENERGY COMMISSION  
Hearing Room A  
1516 Ninth Street  
Sacramento, California  
(Wheelchair Accessible)

If the Commission decides to propose 15 Day Language modifications to the Express Terms, separate notice of the adoption hearing for the 15 Day Language will be provided.

#### AUTHORITY AND REFERENCE

The California Energy Commission proposes to adopt these building standards under the authority granted by Public Resources Code Sections 25213, 25402, 25402.1, 25402.5, 25553 and 25910.

#### INFORMATIVE DIGEST

##### Summary of Existing Laws

Public Resources Code Sections 25402 and 25402.1 were enacted in 1975 as part of the enabling legislation establishing the Energy Commission and its basic mandates. These sections require the Energy Commission to adopt, implement, and periodically update energy efficiency standards for both residential and nonresidential buildings. Enacted at that same time, Section 25910 directed the Commission to adopt standards for the minimum amount of additional insulation installed [as an alteration] in existing



buildings. Senate Bill (SB) 639 (Statutes of 1993) added Section 25402.5 which expressly directed the Commission to consider both new and replacement [as an alteration to an existing building], and both interior and exterior, lighting devices as lighting which is subject to Section 25402. SB 639 also made the express finding that the mandate to consider exterior lighting and replacement lighting is declarative of existing law, clarifying that the Commission's authority related to exterior lighting and to alterations to existing buildings was included in the Legislature's original intent in enacting Section 25402. Assembly Bill (AB) 970 (Statutes of 2000) enacted the requirements in Section 25553 as an urgency statute to respond to California's electricity crisis providing a major impetus to the proposed standards revisions. SB 5X (Statutes of 2001), which also was enacted as an urgency statute in response to the energy crisis to ensure immediate implementation of energy efficiency programs, added subsection (c) to Section 25402.5 to clarify and expand the Commission's authority to adopt standards for outdoor lighting (defined as all electrical lighting not subject to the Commission's current standards).

#### Summary of Existing Regulations

The Building Energy Efficiency Standards were first adopted in 1976 and have been updated periodically since then as directed by statute (the Standards have been updated roughly every three years, more frequently than that in the early years). In 1975 the Department of Housing and Community Development had adopted rudimentary energy conservation standards, under their State Housing Law authority, that were a precursor to the first generation of the Building Energy Efficiency Standards. However, the Warren-Alquist Act was passed that year with explicit direction to the Commission to adopt and implement the Building Energy Efficiency Standards. The Commission's statute created completely separate authority and specific direction to the Commission regarding what the Standards are to address, what criteria are to be met in developing standards, and what implementation tools, aids, and technical assistance are to be provided. The Standards contain requirements for newly constructed buildings, additions to existing buildings, alterations to existing buildings and in the case of nonresidential buildings, repairs to existing buildings. The Standards have contained requirements for alterations to existing buildings for both nonresidential buildings and residential buildings since 1976.

The enabling statute stressed the importance of building design and construction flexibility by requiring the Commission to establish performance standards, in the form of an "energy budget" in terms of the energy consumption per square foot of floor space, and to support the performance Standards with

compliance software to do the necessary energy calculations. The Commission establishes specific requirements for input, output, and calculational uniformity, enabling private firms to develop compliance software to be approved by the Commission, as long as the software programs meet the specific requirements in the Alternative Calculation Method (ACM) Approval Manuals adopted by regulation in support of the Standards.

Based on field research showing major energy waste due to inadequately sealed duct systems, the Commission launched an effort in partnership with the building industry and the California utilities to establish beginning in 1998 third party field verification to insure that important energy efficiency measures, that are prone to improper installation and construction defects, are diagnostically tested and thoroughly inspected to demonstrate that they are installed effectively. The field verification protocols have been adopted as "eligibility criteria" for qualifying for compliance credit in the performance standards and are contained in the ACM Manuals.

In response to AB 970 (statutes of 2000), the Commission adopted emergency amendments to the standards (AB 970 Phase I) that focused on substantially reducing electricity consumption, particularly peak demand. The current Standards have been limited to buildings that are heated and cooled with some requirements for exterior lighting attached to such buildings; but to date the Standards have not realized the substantial energy savings that could be accomplished through Standards for unconditioned buildings and outdoor lighting.

The Standards have always included schools as one of the building types within the scope of the Standards. The Division of the State Architect (DSA) is the enforcement agency for public school buildings. In 2001 DSA explicitly included in its administrative regulations the expectation that all public school buildings will comply with the Building Energy Efficiency Standards. DSA has been working with support from the Commission to pursue vigorously enforcement of the Standards for schools, including relocatable public school buildings.

The Standards include a basic set of mandatory requirements that apply in all cases. In addition to the mandatory requirements, the performance standards establish energy budgets that vary by climate zone and building type. As an alternative to the performance standards, there are prescriptive requirements that are basically a "checklist" compliance approach that allows little flexibility (the Overall Envelope Approach, a prescriptive option, allows a limited tradeoff method for nonresidential building envelopes). Mandatory requirements that apply to all building types are in Sections 110–119. The requirements for nonresiden-

tial buildings, high-rise residential buildings and hotels/motels are in Sections 120 to 149 with additional mandatory requirements in Sections 120 to 132; performance standards requirements in Section 141 (supported by the detailed requirements in the Nonresidential ACM Manual); prescriptive requirements in Sections 142 to 146; and requirements for additions, alterations, and repairs to existing buildings in Section 149. The requirements for low-rise residential buildings are in Sections 150 to 152 with additional mandatory requirements in Section 150; performance standards requirements in Sections 151(b) to 151(e) (supported by the detailed requirements in the Residential ACM Manual); prescriptive requirements in Section 151(f); and requirements for additions and alterations to existing buildings in Section 152. The administrative regulations for the Standards are in Part I, Chapter 10.

#### Summary of Effect

A summary of the changes to current Building Energy Efficiency Standards proposed under this rulemaking are as follows:

### PART 6

#### STANDARDS CHANGES FOR ALL BUILDING TYPES

***Time Dependent Valuation (TDV)*** (§ 102) The basis of the performance standards calculations will change to time dependent valuation, substantially increasing the importance of measures that reduce peak electricity consumption relative to measures that impact energy use in off-peak periods.

***Performance Requirements for Heat Rejection Equipment*** (§ 112, Table 11 2-G) Factory assembled cooling towers will be required to be certified by the Cooling Technology Institute to meet the requirements of CTI STD-201. There will be no certification requirements for field erected cooling towers.

***Fenestration Default Values*** (§ 116) The default values for fenestration (windows, skylights, and glazed doors) U-factors and Solar Heat Gain Coefficients will be updated to agree with recently revised National Fenestration Rating Council test procedures.

***Placement of Insulation at the Roof/Ceiling*** (§ 118(e)) Insulation will be required to be placed directly in contact with a continuous roof or ceiling. Placement on top of a suspended ceiling with removable ceiling panels will be deemed to have no insulative effect except in very limited situations.

***Demising Walls in Nonresidential Buildings*** (§ 118(f)) The R-value for insulation between framing members of demising walls will be increased from R-11 to R-13.

***Insulation for Heated-Slab Floors*** (§ 118(g)) Minimum insulation levels, water absorption rates, and

insulation protection requirements will be established for insulation used with heated-slab floors.

***Cool Roofs*** (§ 118(i)) The current requirements for cool roofs to qualify for compliance credit and to meet prescriptive and performance standards requirements will be moved to this location, expanded to allow a means for roofs with very high reflectance and lower emittance to qualify, and requirements for liquid applied roofing products will be revised to be more widely applicable to the range of available coatings.

***Daylighting Controls*** (§ 119(e, (h) and (i)) Requirements to insure the reliability of Automatic Daylighting Control Devices, Multi-Level Astronomical Time-Switch Controls, and Automatic Multi-Level Daylighting Controls will be added.

#### STANDARDS CHANGES FOR NONRESIDENTIAL, HIGH-RISE RESIDENTIAL, AND HOTEL/MOTEL BUILDINGS

##### ***Mandatory Requirements***

***Natural Ventilation*** (§ 121(b) 1) Current requirements for natural ventilation will be clarified and the depth of spaces allowed to be naturally ventilated in high-rise residential dwelling units and hotel/motel guest rooms is extended to 25 feet.

***Outdoor Air and Demand Control Ventilation*** (§ 121(c) 1, 3, 4, and 5) Demand control ventilation will not be allowed as an alternative to continuous ventilation when operations or processes are present that generate specified pollutants and exhaust ventilation is not provided. With the exception of the above situation, the current requirements for demand control ventilation will be expanded to include specific occupancies with moderate to high occupant densities, which have an outdoor air economizer. Demand control ventilation devices will have new performance requirements. Acceptance requirements will be established to insure demand control ventilation systems are tested before occupancy to determine that they meet Standards requirements. Minimum ventilation rates will be changed for bars, cocktail lounges, and casinos. Acceptance requirements also will be established to insure ventilation systems are tested before occupancy to determine that they meet Standards requirements.

***Space Conditioning Controls Acceptance*** (§ 122(h)) Acceptance requirements also will be established to insure that space conditioning controls are tested before occupancy to determine that they meet Standards requirements.

***Duct Insulation*** (§ 124(a) and (g)) Duct insulation requirements for ducts in unconditioned or indirectly conditioned spaces will be increased to R-8. Flexible ducts having porous inner cores will not be allowed.

**Mechanical System Acceptance** (§ 125(a), (b), (c), and (d)) Acceptance requirements also will be established to insure mechanical systems are tested before occupancy to determine that they meet Standards requirements, including air distribution system ducts and plenums, economizers, variable air volume systems, and hydronic system controls.

**Indoor Lighting in High-rise Residential Living Quarters and Hotel/Motel Guest Rooms** (§ 130(b)) Lighting in these spaces will be required to meet the same new requirements for low-rise residential buildings in § 150(k).

**Luminaire Power** (§ 130(c)) A clarification will be made that the wattage of incandescent or tungsten-halogen luminaires with medium screw base sockets will be the maximum relamping rated wattage of the luminaire shown on a permanent factory-installed label as specified by Underwriters Laboratories.

**Multi-Level Lighting Controls** (§ 131(b)) Current requirements for lighting controls will be clarified and made more specific.

**Daylit Areas** (§ 131(c)) Current requirements for lighting controls in daylit areas will be clarified and made more specific.

**Shut-off Controls** (§ 131(d)) Current requirements for lighting shut-off controls will be clarified and made more specific.

**Lighting Control Acceptance** (§ 131(f)) Acceptance requirements will be established to insure lighting controls are tested before occupancy to determine that they meet Standards requirements.

**Outdoor Lighting** (§ 132(a)) The current requirements for high efficacy exterior lighting will be moved to this location and extended to all outdoor lighting with specific exceptions.

**Luminaire Cutoff Requirements** (§ 132(b)) All outdoor luminaires that use lamps rated greater than 175 watts in hardscape areas including parking lots, building entrances, sales and non-sales canopies, and all outdoor sales areas will be required to be rated as "Cutoff" for light distribution.

**Controls for Outdoor Lighting** (§ 132(c)) The current requirement for exterior lighting to be controlled by a photoelectric or astronomical time switch will be moved to this location and extended to all outdoor lighting with specific exceptions. The requirement that has been long in effect for indoor lighting for controls capable of "bi-level switching" will be extended to outdoor lighting with specific exceptions.

### **Performance Standards**

**Space-Conditioning Budget** (§ 141(a) 1) The space conditioning energy budget will be based on Time Dependent Valuation energy, a cool roof for nonresidential buildings with low-slope roofs, a maximum west-wall glazing area, and skylights with daylighting

controls where required by the prescriptive standards in addition to other measures required by current energy budget rules.

**Relocatable Public School Buildings** (§ 141(d)) The energy budget will either be based on the special statewide prescriptive envelope requirements for relocatable public school buildings (relocatables) or the prescriptive envelope requirements for schools that vary by climate zone. Relocatables that will be allowed to be installed anywhere in the state will demonstrate that compliance will be achieved in the most severe climates. Relocatables that will be allowed to be installed in only specific climate zones will demonstrate compliance in each of those climates. Compliance will be demonstrated in all orientations.

### **Prescriptive Standards Building Envelope**

**Envelope Component Approach** (§ 143(a)) This prescriptive checklist approach will be changed so that nonresidential buildings with low-slope roofs will be required to have cool roofs. Insulation will be required to be placed in direct contact with a continuous roof or drywall ceiling. To comply with prescriptive R-values, roofs with metal framing members or a metal deck will be required to install continuous insulation either above the roof deck or between the roof deck and the structural members supporting the roof deck as specified. West-facing window area will be limited to no more than 40 percent of the wall area. The Prescriptive Envelope Criteria in Tables 143-A and 143-B will be updated to base wall U-factors on increased framing percentages, make minor recalculations on other roof/ceiling and floor/soffit U-factors, and match window and skylight U-factors to new National Fenestration Rating Council (NFRC) test procedures. Requirements for relocatable public school buildings will be clarified, including the establishment of special Prescriptive Envelope Criteria (Table 143-C) for relocatables that can be installed in any climate zone in the state, and the requirement that relocatables be labeled to identify that either they can be installed anywhere statewide or they can only be lawfully installed in specific climate zones.

**Overall Envelope Approach** (§ 143(b)) This prescriptive tradeoff approach for building envelopes will be changed to establish a limit on west-wall area in the Standard Heat Loss Equation, and to provide tradeoffs to account for Cool Roof Rating Council (CRRC) certified reflectance and emittance ratings relative to Standard Heat Gain calculations. The Standard Heat Gain calculations will assume a cool roof for nonresidential low-slope roofs and a nominal default reflectance for nonresidential high-slope roofs, and roofs for high-rise residential buildings and hotel/motels.



**Minimum Skylight Area for Large Enclosed Spaces in Low-Rise Buildings** (§ 143(c)) Low-rise conditioned or unconditioned enclosed spaces with some exceptions that are greater than 25,000 square feet directly under a roof with ceiling heights greater than 15 feet, and that have a lighting power density for general lighting greater than 0.5 Watt/square feet, will be required to have at least one-half of the floor area daylit by skylights. The skylights will be required to have a glazing material or diffuser that effectively diffuses the daylight, and multi-level daylighting controls will be required.

### **Space Conditioning**

**Outdoor Design Conditions** (§ 144(b) 4) Outdoor design conditions for equipment sizing will be required to be the 1.0 percent Cooling Dry Bulb and Mean Coincident Wet Bulb temperatures in Joint Appendix II. Cooling design wet bulb temperatures for cooling towers will be the Summer Design Wet Bulb 0.5 percent temperatures.

**Variable Air Volume (VAV) Systems** (§ 144(c) 2) Variable air volume systems with motors 10 horsepower or larger will be required to have variable speed drives. Static pressure sensors will be required to be placed in a position such that the controller set point is no greater than one-third the total design fan static pressure. The static pressure set point will be required to be reset based on the zone requiring the most pressure.

**Fan Motors of Series Fan-Powered Terminal Units** (§ 144(c) 3) Fan motors of series fan-powered terminal units will be required to be electronically-commutated or have a minimum motor efficiency of 70 percent.

**Economizer Acceptance** (§ 144(e) 4) Acceptance requirements will be established to insure that economizers are tested before occupancy to determine that they meet Standards requirements.

**Heat Rejection Systems** (§ 144(h)) Open cooling towers will be required to be designed so that flow can be turned down to 33 percent of the design flow for the cell. Cooling towers with a combined rated capacity of 900 tons or greater will be required to use propeller fans rather than centrifugal fans.

**Limitation of Air-Cooled Chillers** (§ 144(i)) Chilled water plants with more than 300 tons capacity will be required to have not more than 100 tons provided by air-cooled chillers.

**Hydronic System Measures** (§ 144(j)) Chilled and hot water pumping will be required to be designed for variable flow. Chillers and boilers will be required to be designed so that equipment can be isolated to not allow flow through equipment when the equipment is shut off. Chilled and hot water systems with a design capacity greater than 500,000 Btu/h will be required to

have temperature reset controls. Water-loop heat pumps will be required to have isolation valves and variable speed drives on the pumps. Variable flow chilled and condenser water pump systems will be required to have variable speed drives and controls.

**Air Distribution System Duct Leakage Sealing** (§ 144(k)) Duct systems with more than 25 percent duct surface area in unconditioned or indirectly conditioned spaces will be required to be sealed with leakage not greater than 6 percent of fan flow, confirmed through diagnostic testing and field verification.

**Air Distribution System Duct and Plenum Acceptance** (§ 144(l)) Acceptance requirements will be established to insure that duct systems are tested before occupancy to determine that they meet all Standards requirements.

### **Indoor Lighting**

**Reduction of Wattage Through Controls** (§ 146(a) 4) Installing effective controls reduces the duration that lighting equipment is on, thereby reducing energy use. Compliance credit may be taken for installing lighting controls meeting specific criteria through the use of Power Adjustment Factors which create tradeoffs against the lighting power density allowances in the Standards. To qualify for the Power Adjustment Factor credit in small offices, occupant sensors will be required to have an automatic off function and either a manual on function or bi-level automatic on function with multi-level circuitry and switching. New Power Adjustment Factor credits will be established for the above occupancy sensor combined with daylighting controls in specific spaces and for the above occupancy sensor combined with manual dimming with dimmable electronic ballasts. A new Power Adjustment Factor credit will be established for occupant sensor controlled multi-level switching or dimming that reduces power at least 50 percent when no people are present in hallways of hotels/motels, commercial and industrial storage stack areas, and library stacks. To qualify for the Power Adjustment Factor credit for automatic daylighting controls with windows, stepped switching or stepped dimming/continuous dimming will be required. A Power Adjustment Factor credit for automatic multi-level daylighting controls with skylights will be established with a requirement for the skylight glazing material or diffuser to be highly diffusing as specified. Some previously available Power Adjustment Factor credits will be discontinued.

**Lighting Wattage Excluded** (§ 146(a) 5) The list of lighting applications that may be excluded when showing compliance with lighting power density requirements will be clarified to respond to clarification questions that staff has received on the current



Standards. Specific lighting applications, in particular for unconditioned buildings and parking garages and signs, will be excluded from the indoor lighting power density requirements.

**Complete Building Method** (§ 146(b) 1) This method allots maximum lighting power densities for complete buildings. New allotments will be added for financial institutions, hotels, auditoriums and parking garages. The allotments for some existing building types will be reduced to save energy. The use of the power allotment for retail and wholesale stores will be clarified to not allow its use in situations where it is not known at time of permitting if the tenants in a multi-tenant building actually will all be retail and wholesale stores and in situations where the merchandise sales function area makes up less than 70 percent of the building area. The lighting power density allowance for parking garages will not be allowed to be traded off with the lighting power density allowance for the conditioned portion of buildings.

**Area Category Method** (§ 146(b) 2) This method allots maximum lighting power densities for specific spaces within a building. New allotments will be established for civic meeting rooms, financial transaction areas, public and commons areas in housing, parking garages, religious worship areas, tenant lease spaces, and transportation functions. The allotments for some existing building types will be reduced to save energy. The tenant lease space allotment will be required for multi-tenant spaces where a tenant is not identified at the time of permitting.

**Tailored Method** (§ 146(b) 3) This method allots lighting power for specific types of lighting functions, which create special lighting needs that are not present in all buildings or areas within buildings, and which occur infrequently in most buildings. This method allows lighting power allotments to be established for these cases so that the allotment is "tailored" to the specific building. The Tailored Method will be substantially revised to clarify its use, update the allotments for specific lighting functions to require the use of more energy efficient equipment, and constrain its use to situations where special lighting needs truly exist while maintaining flexibility of its use in those situations.

### **Outdoor Lighting**

**Outdoor Lighting Power** (§ 147) Outdoor lighting power allowances with specific exceptions will be established for the following general outdoor illumination applications: hardscape for automotive vehicular use, hardscape for pedestrian use, pathways, building entrances without canopies, and outdoor sales lots. Tradeoffs among the general illumination applications will be allowed to provide design flexibility. Allowances also will be established for the following

specific illumination applications: building facades, outdoor sales frontage, vehicle service stations, other sales canopies, non-sales canopies, and ornamental lighting. The specific illumination allowances will be "use it or lose it" allowances, which can't be traded-off against the allowances for general illumination applications. The lighting power allowances for each illumination application will be established for each of four lighting zones, as specified in Part 1, § 10-114. Methods for calculating allowed lighting power levels will be specified. Higher power allowances for hardscape will be provided if specific light levels are required by law through a local ordinance.

### **Signs**

**Requirements for Signs** (§ 148) Lighting power allowances will be established for internally illuminated and externally illuminated signs for both indoor and outdoor use. Alternatives to the lighting power allowances will be established that allow compliance merely if electronic ballasts are used or if specific light sources are used. The requirements for signs will apply statewide and will not depend on lighting zone.

### **Additions, Alterations and Repairs**

**Additions** (§ 149(a)) When the owner chooses to show compliance for an addition by upgrading a component of the existing building to compensate for failing to meet a prescriptive requirement applicable to additions, the upgraded component will be required to meet the requirements for alterations. When ducts will be extended from an existing duct system to serve an addition, the ducts will be allowed to meet the duct sealing requirements for alterations to existing duct systems.

### **Alterations**

**Prescriptive Approach** (§ 149(b) 1) Alterations to the building envelope other than for roof replacements, recovering, or recoating, will be required to meet one or the other of the following requirements: i) when there are no changes to fenestration area, the requirements for newly constructed buildings that apply to the altered component, or ii) neither increase the overall heat gain nor increase the overall heat loss of the building envelope. An exception to option i will allow increases of less than 50 square feet of fenestration area or replacements to only a portion of the building's fenestration area to meet the requirements for newly constructed buildings, except the requirements for solar heat gain coefficient will not be required to be met.

When more than 50 percent of the exterior surface or more than 2,000 square feet of roof (whichever is less) of nonresidential low-slope roofs is replaced, recovered, or recoated, the requirements for cool roofs will apply. A tradeoff option will be established which

allows other features of the building envelope to be improved to compensate for failure to meet the cool roof requirements. An exception will be established for roof recoverings allowed by the California Building Code when both the existing roof and the new roof have a rock or gravel surface, when there is no removal of existing layers of roof coverings, and when there is no recoating with a liquid applied coating.

When new or replacement ducts are installed to serve an existing building where the ducts are located in unconditioned or indirectly conditioned space as specified by § 144(k), the duct system will be required to meet the mandatory requirements in § 124 and be sealed, tested and field verified. Ducts that form entirely new duct systems will be sealed to meet the prescriptive requirements for newly constructed buildings. New ducts that extend an existing duct system will have two options: i) the measured duct leakage for the combined new and existing duct system will be less than 15 percent of fan flow, or ii) the duct leakage prior to sealing will be reduced by more than 60 percent and a visual inspection will be required to show that all accessible leaks have been sealed. It is possible that neither of the two options for extensions of existing duct systems can be achieved. If that is the case, compliance will require that a certified Home Energy Rating System (HERS) rater verifies that all accessible leaks have been sealed. Duct sealing will not be required when an existing duct system that is extended is constructed, insulated, or sealed with asbestos.

When a space conditioning system is altered by the installation or replacement of space conditioning equipment, including replacement of an air handler, cooling or heating coil, or furnace heat exchanger, the existing duct system that is connected to that new or replaced space conditioning equipment will be required to be sealed, tested, and verified to the same requirements of new ducts that extend an existing duct system. Duct sealing will not be required when only a new outdoor condensing unit of a split system air conditioner or heat pump is installed; when the existing duct system is documented to have been previously sealed, tested and field verified; when the existing duct system is altered to no longer be within the scope of § 144(k); or when the existing duct system is constructed, insulated or sealed with asbestos.

Alterations to existing outdoor lighting systems that increase the connected load or replace more than 50 percent of the luminaries will be required to meet the lighting power allowances in § 147.

New internally and externally illuminated signs installed in conjunction with alterations will be required to meet the requirements for signs in § 148, as

well as alterations to signs that increase the connected lighting load or replace more than 50 percent of the ballasts in existing signs.

**Performance Approach** (§ 149(b) 2) The altered building will be required to be improved so that the building uses no more energy than an energy budget that is based on: i) compliance with the cool roof requirements for roof replacements, ii) no other changes to the existing building envelope, and iii) compliance with the prescriptive requirements for mechanical and lighting system alterations.

## STANDARDS CHANGES FOR LOW-RISE RESIDENTIAL BUILDINGS

### **Mandatory Requirements**

**Air Retarding Wrap** (§ 150(f)) The requirements for an infiltration barrier, which no longer apply, will be replaced by requirements for air retarding wraps, as specified in the Residential ACM Manual.

**Design Conditions** (§ 150(h) 2) Outdoor design conditions for equipment sizing will be required to be the 1.0 Percent Cooling Dry Bulb and Mean Coincident Wet Bulb temperatures in Joint Appendix II.

**Water Piping and Cooling System Line Insulation Thickness and Conductivity** (§ 150(j) 2) Hot water pipes from the water heater to the kitchen will be required to be insulated. The method for specifying water piping and cooling system line insulation requirements that has previously been used for nonresidential and high-rise residential buildings, will be applied to low-rise residential buildings while maintaining the overall stringency of the existing low-rise residential requirements. This change will add clarity and flexibility for calculating insulation thickness for the complete range of insulation materials commonly in use. Insulation requirements will be clarified to apply to all cooling system refrigerant suction, chilled water and brine lines.

**Residential Lighting** (§ 150(k)) The requirements for residential lighting will be substantially revised to increase clarity and specificity, require high efficacy lighting equipment or energy savings controls for permanently installed luminaries in all lighting functions, as well as require recessed luminaries in insulated ceilings to be airtight. At least 50 percent of the lighting wattage in kitchens will be required to be high efficacy. Lighting in bathrooms, garages, laundry rooms, and utility rooms will be required to be high efficacy or controlled by a "manual on" occupant sensor. Lighting in other indoor spaces will be required to be high efficacy or be controlled by a dimmer switch. Outdoor lighting permanently mounted to a building will be required to be high efficacy or be controlled by a motion sensor with an integral photosensor. Lighting in parking lots and parking garages for eight or more vehicles will be

required to meet all applicable mandatory and prescriptive requirements in other sections of the Standards that apply to such lighting. Lighting installed in the common areas of low-rise residential buildings with four or more dwelling units will be required to be high efficacy or be controlled by an occupant sensor.

### **Performance Standards**

**Water Heating Budgets** (§ 151(b) 1) The water heating budget for systems serving multiple dwelling units will be based on a central recirculating water heating system with gas water heaters and timer controls. For systems serving individual dwelling units, a single storage type gas water heater meeting the prescriptive and mandatory standards will be the basis of the energy budget. The energy budget for systems serving individual dwelling units will also be met by installation of an instantaneous gas water heater.

**Space-conditioning Budgets** (§ 151(b) 2) The space conditioning budgets will be changed to be based on the revised prescriptive requirements in Section 151(f) using an approved calculation method meeting the requirements of the Residential ACM Approval Manual.

### **Prescriptive Standards**

**Fenestration Glazing** (§ 151(f) 3) Area-weighted average U-factors will be allowed to be used to comply with U-factor requirements. The U-factor requirements in Package D will be updated to match the new NFRC test procedures. The maximum fenestration area requirements in Package D will be revised to be 20 percent in all climate zones. In specific climate zones with substantial summer cooling energy use, the west-facing fenestration area in Package D will be limited to 5 percent of the conditioned floor area.

**Shading** (§ 151(f) 4) Area weighted average Solar Heat Gain Coefficients (SHGCs) will be allowed to be used to comply with SHGC requirements for fenestration products other than skylights. Skylights will continue to be required to comply with SHGC requirements individually.

**Space Heating and Space Cooling** (§ 151(f) 7) Air conditioners and heat pumps will be required to meet new federal appliance standards as specified in the Appliance Efficiency Regulations.

**Water-Heating Systems** (§ 151(f) 8) Water heaters will be required to meet new federal appliance standards as specified in the Appliance Efficiency Regulations. For systems serving individual dwelling units, either a single gas storage type water heater, 50 gallons or smaller, with no recirculation pumps and meeting the mandatory insulation requirements for

storage tanks and hot water pipes to the kitchen, or instantaneous gas water heaters will be required. For systems serving multiple dwelling units, a central recirculating water heating system with gas water heaters with timer controls will be required.

**Space Conditioning Ducts** (§ 151(f) 10) Duct insulation requirements for Package D will be R4.2 in climate zones 6, 7, and 8; R6 in climate zones 1–5, and 9–13; and R8 in climate zones 14, 15 and 16. Duct insulation requirements for Package C will be R8 statewide.

### **Additions and Alterations**

#### **Additions**

**Prescriptive Approach** (§ 152(a) 1) The fenestration in additions up to 100 square feet will be required to meet the U-factor requirements in Package D.

**Performance Approach** (§ 152(a) 2) When the builder chooses to show compliance for an addition by upgrading a component of the existing building to compensate for failing to meet a prescriptive requirement applicable to additions, the upgraded component will be required to meet the requirements for alterations. When ducts will be extended from an existing duct system to serve an addition, the ducts will be allowed to meet the duct sealing requirements for alterations to existing duct systems.

#### **Alterations**

**Prescriptive Approach** (§ 152(b) 1) Alterations that add fenestration area will be required to meet the U-factor, fenestration area, and SHGC requirements of Package D with the exception that increases of fenestration area up to 50 square feet that meet the U-factor and SHGC requirements will be allowed.

Replacement fenestration, where all the glazing in an existing fenestration opening is replaced with a new manufactured fenestration product, will be required to meet the U-factor and SHGC requirements of Package D. Glass replaced in an existing sash and frame or replacement of a single sash in a multi-sash fenestration product are considered repairs, which are not required to comply.

When more than 40 feet of new or replacement space conditioning ducts are installed to serve an existing building, the new ducts will be required to meet the mandatory requirements in § 150 (m) and the duct insulation requirements in Package D, and in climate zones 2 and 9–16 the combined new and existing duct system will be required to be sealed, tested, and field verified. Ducts that form entirely new duct systems will be sealed to meet the prescriptive requirements for newly constructed buildings. New ducts that extend an existing duct system will have three options: i) the measured duct leakage for the combined new and existing duct system will be less



that 15 percent of fan flow; ii) the duct leakage to outside will be less than 10 percent of fan flow; or iii) the duct leakage prior to sealing will be reduced by more than 60 percent and a visual inspection and smoke test will be required to show that all accessible leaks have been sealed. It is possible that none of the three options for extensions of existing duct systems can be achieved. If that is the case, compliance will require that a certified HERS rater verifies through observation and a smoke test that all accessible leaks have been sealed. Duct sealing will not be required when an existing duct system that is extended is constructed, insulated, or sealed with asbestos.

When a space conditioning system is altered by the installation or replacement of space conditioning equipment, including replacement of an air handler, cooling or heating coil, or furnace heat exchanger, the existing duct system that is connected to that new or replaced space conditioning equipment will be required to be sealed, tested and verified to the same requirements of new ducts that extend an existing duct system. Duct sealing will not be required when only a new outdoor condensing unit of a split system air conditioner or heat pump is installed; when the existing duct system is documented to have been previously been sealed, tested and field verified; when the existing duct system is less than 40 linear feet in unconditioned spaces or when the existing duct system is constructed, insulated or sealed with asbestos.

**Performance Approach** (§ 152(b) 2) The altered building will be required to be improved so that the building uses no more energy than an energy budget based on an unchanged existing building except that those altered components that do not meet the prescriptive alteration requirements are upgraded to meet those requirements. When an altered component does meet the prescriptive alteration requirements, the energy budget will be based on the existing building without that altered component.

## PART 1, CHAPTER 10

### ADMINISTRATIVE REGULATIONS CHANGES

**Application for a Building Permit** (§ 10-103(a) 2B) Plans and specifications submitted with an application for a building permit for nonresidential buildings, high-rise residential buildings, and hotels and motels will be required to include acceptance requirements where required in Part 6. Within 90 days after the enforcement agency issues a final permit, record drawings will be required to be provided to the building owner.

**Certificate of Acceptance** (§ 10-103(b) A Certificate of Acceptance will be required to be filed with and approved by the enforcement agency prior to receiving a final occupancy permit. The Certificate of

Acceptance will indicate that the applicant has demonstrated acceptance requirements in the plans and specifications, that current requirements for installation certificates are met, and that currently required operating and maintenance information (as well as the Certificate of Acceptance) were provided to the building owner.

**Certification and Labeling of Fenestration Product U-factors, Solar Heat Gain Coefficients and Air Leakage** (§ 10-111) This section will be substantially rewritten for clarity.

**Certification and Labeling of Roofing Product Reflectance and Emittance** (§ 10-112(a)) Labeling requirements for roofing products will be revised to match those required by the Cool Roof Rating Council (CRRC-1) and the marking of roofing packaging for liquid-applied coatings will be reduced to a statement that the product meets the requirements of Part 6, § 118(i) 3.

**Determination of Outdoor Lighting Zones and Administrative Rules for Use** (§ 10-114) Lighting zones which vary by ambient illumination levels will be established, and statewide default locations will be specified. Procedures will be established for local jurisdictions officially to adopt changes to the statewide default locations to meet local outdoor lighting needs.

### OTHER CHANGES TO THE STANDARDS AND ADMINISTRATIVE REGULATIONS

Changes will be made throughout the Standards (including extensive changes to Part 6, Subchapter 1 and Appendix 1-A) to update the Standards to incorporate requirements for unconditioned buildings, outdoor lighting, and signs; to update information related to referenced standards, test procedures, and other documents; to revise definitions for clarity and consistency with other revisions to the Standards; and to improve the clarity of the Standards.

### CHANGES TO THE ALTERNATIVE CALCULATION METHOD APPROVAL MANUALS

The Alternative Calculation Method Approval (ACM) Manuals are adopted by regulation to support the Standards in Part 6. The ACM Manuals contain detailed requirements that developers of computer software must meet for the Commission to approve their software for showing compliance with the Standards. They also contain detailed information regarding compliance options, including specific calculation algorithms that have been approved for assessing the compliance credit or penalty due to installation of the compliance option and specific eligibility criteria (minimum performance requirements or required installation methods) that must be met for a measure to qualify for compliance credit.



Many of the compliance options require diagnostic testing and field verification by a certified HERS rater. The ACM Manuals contain explicit protocols for how the diagnostic testing must be conducted both by installers and HERS raters and procedures for the field verification. The ACM Manuals also provide detailed building material characteristics data, weather data, and other information necessary for completing calculations for showing compliance with the Standards. The ACM Manuals will be extensively revised to improve their clarity and organization, incorporate new compliance options including new diagnostic testing protocols, improve field verification procedures, and improve the data needed for Standards calculations.

### ***Residential Alternative Calculation Methods Approval Manual***

Approved compliance software will be required to produce a revised Certificate of Compliance form (CF-1R) that combines the information that previously was provided on two forms (CF-1R and C-2R), thus reducing and simplifying compliance documentation. Procedures for implementing Time Dependent Valuation will be required. A number of modeling algorithm and assumptions changes will be made, including new modeling rules for water heating pipe distribution systems, water heating recirculation systems in multi-family buildings, hourly duct efficiency, slab edge losses, and thermostat setpoints and schedules.

New compliance rules will be implemented for treatment of glazing area, basing energy budgets for multi-family buildings using a central water heating system on a central, recirculating water heating system, and basing wall U-factors on a 25 percent framing factor. All U-factors for building envelope assemblies will be required to be determined using extensive look-up tables in Joint Appendix IV. U-factors for unique assemblies that diverge from the table values will be required to be approved by the Commission. Calculation procedures for solar water heating systems will be substantially improved for accuracy and to better coordinate with the Solar Rating and Certification Corporation (SRCC) ratings. The modeling and compliance procedures for duct efficiency improvements will be substantially revised to integrate the implications of supply duct location, surface area, and R-value, as well as to facilitate compliance efforts to improve these duct characteristics, including the provision of a new compliance option for ducts buried in blown ceiling insulation. The modeling and compliance procedures for air conditioner refrigerant charge and air flow will be revised to match recent research findings on the energy consequences of these measures and to update air flow diagnostic testing protocols.

New compliance options will be established for gas absorption cooling, reduced air handler fan watt draw, high EER air conditioners, properly sized air conditioners, and high quality insulation installation. New calculation methods will be implemented for existing plus addition plus alteration compliance. New procedures will be required and new accuracy tests will be established for computer compliance software to match changes in the Standards, and modeling algorithms, assumptions, and rules.

Procedures for field verification by certified HERS raters will be clarified and improved, including a new requirement for documentation authors to notify HERS providers prior to permit application of buildings for which field verified measures are chosen for compliance; a new process whereby Third Party Quality Control Programs can serve the function of HERS raters for field verification purposes; and new procedures for field verification for additions and alterations. In addition the Residential ACM Manual will be substantially re-written and reorganized for clarity and accuracy, and appendices will be substantially revised and supplemented to improve existing protocols and add new ones.

### ***Nonresidential Alternative Calculation Methods Approval Manual***

Procedures for implementing Time Dependent Valuation will be required. All U-factors for building envelope assemblies will be required to be determined using extensive look-up tables in Joint Appendix IV. U-factors for unique assemblies that diverge from the table values will be required to be approved by the Commission.

New compliance rules related to basing the energy budget on new prescriptive requirements will be implemented. A new occupancy category with associated schedules will be added for retail buildings. New algorithms will be added for gas engine driven chillers and heat pumps, and underfloor air distribution systems.

Modeling algorithms and compliance procedures for improvements in duct efficiency, for ducts located in unconditioned or indirectly conditioned space, will be extensively revised. A new appendix will be added to address modeling, diagnostic testing, and field verification requirements for duct sealing where required by the Standards in newly constructed buildings, additions, and alterations.

Procedures for field verification by certified HERS raters will be clarified and improved, including a new requirement for documentation authors to notify HERS providers prior to permit application of

buildings for which field verified duct sealing is chosen for compliance; a new process whereby Third Party Quality Control Programs can serve the function of HERS raters for field verification purposes; and new procedures for field verification for additions and alterations.

A new appendix will be added that covers the requirements for compliance modeling for relocatable public school buildings. Another new appendix will be added that covers the specific protocols that must be used to complete acceptance testing for outdoor air, packaged space conditioning systems, air distribution systems, lighting control systems, economizer controls, demand control ventilation systems, variable frequency drive systems, and hydronic systems controls.

In addition the Nonresidential ACM Manual will be substantially re-written and reorganized to improve clarity and accuracy.

### ***Joint Appendices***

New Joint Appendices will be provided that consolidate the information and data needed for understanding and complying with the Standards and developing approved calculation methods. These new Joint Appendices will be a consolidation and updating of information previously supplied in ACM Manual appendices and in the Commission's Nonresidential Manual. The Joint Appendices also will include new information and data needed for compliance with the new Standards.

Joint Appendix I will provide a comprehensive glossary of the terms used in the Standards and compliance documents, updating all definitions to be consistent with Standards changes and to improve clarity and accuracy. Joint Appendix II will provide consolidated information about California climate zones and outdoor design temperature data for California locations that will be required for sizing space conditioning systems.

Joint Appendix III will provide information about the Time Dependent Valuation factors that will be required for performance standards compliance. Joint Appendix IV will provide U-factor, C-factor, and thermal mass data that will be required for modeling building envelope assemblies and for showing compliance with prescriptive envelope requirements.

### **COMPARABLE FEDERAL STATUTES OR REGULATIONS**

There are no federal building energy efficiency standards applicable to nonfederal buildings. The California Building Energy Efficiency Standards do, however, reference federal energy efficiency standards for particular appliances.

### **POLICY STATEMENT OVERVIEW**

The State of California is in a critical situation related to energy. Within the last three years California has experienced rolling blackouts, sharply rising electricity and natural gas costs, major utilities that are among the largest businesses in California facing bankruptcy, and in some cases health and life safety emergencies due to energy disruptions or unaffordable energy bills. Low-income people have been particularly vulnerable. The energy crisis has been a major contributing factor to the economic downturn in the state and the fiscal crisis facing State government.

Recognizing the importance of reducing energy consumption in buildings, the Legislature and the Governor enacted AB 970 (Statutes of 2000) as urgency legislation. AB 970 directed the Energy Commission to "adopt and implement updated and cost-effective standards pursuant to Section 25402 to ensure the maximum feasible reductions in wasteful, uneconomic, inefficient or unnecessary consumption of electricity. . ." AB 970 directed updated building standards to be adopted and implemented within 120 days or the earliest feasible date thereafter. The Commission completed the adoption of emergency updates to the Standards within the legislative deadline, but substantial opportunities to further reduce energy consumption could not be accomplished in that timeframe. So, immediately after adopting the AB 970 emergency standards, the Commission initiated a project, "AB 970 Phase II," to pursue in the next triennial update of the Standards the additional measures expected to be adopted by AB 970 "at the earliest feasible date."

In addition the Legislature and Governor recognized the critical need to adopt energy efficiency building standards for outdoor lighting by enacting SB 5X (Statutes of 2001) as urgency legislation. SB 5X clarified and expanded the Commission's authority to adopt building standards for all types of lighting. Prior to SB 5X the Commission's Standards addressed only lighting inside conditioned buildings or exterior lighting attached to or served by electricity supplied from conditioned buildings. SB 5X gave the Commission explicit direction to adopt building standards for all electrical lighting not subject to the Commission's current Standards. This includes lighting in unconditioned buildings and outdoor lighting. In the winter prior to the passage of this bill, rolling blackouts had occurred at night when outdoor lighting was in peak use. The importance of saving energy in outdoor lighting had previously been signaled by the Governor's Order no. D-19-01, which required businesses to reduce outdoor lighting by 50 percent after business hours.

The Standards proceeding also is pursuing major objectives of the Commission, including the adaptation of the Standards to emphasize energy efficiency measures that save energy at peak periods and seasons, encouragement of improvements in the quality of installation of energy efficiency measures, and adoption of requirements based on the findings of recent publicly funded building science research. The proceeding also represents a collaboration with the California utilities to coordinate upgraded building standards with publicly funded market incentive programs, regarding technologies that have been demonstrated through those programs to be appropriate for incorporation into Standards.

OTHER MATTERS PRESCRIBED BY  
STATUTE APPLICABLE TO THE AGENCY OR  
TO ANY SPECIFIC REGULATION OR  
CLASS OF REGULATIONS

The foundation law governing adoption and implementation of the California Building Energy Efficiency Standards (California Energy Code), Public Resources Code 25402 and 25402.1, provides specific direction to the Energy Commission, as the adoption authority, regarding the scope of the Standards, their required approaches, and the criteria for their adoption. The Standards must be adopted and periodically updated as determined appropriate by the Energy Commission.

The Standards must contain both prescriptive and performance standards. The Standards must be supported by energy calculation computer programs and other methods that are consistent with the programs used for developing the Standards. The Standards must be cost effective when taken in their entirety and when amortized over the economic life of the structure when compared with historic practice.

MANDATE ON LOCAL AGENCIES OR  
SCHOOL DISTRICTS

The Energy Commission has determined that the proposed regulatory action would not impose a new mandate on local agencies. The statute obligates local building departments to serve as enforcement agencies for the Standards. The Standards contain energy efficiency requirements for schools. Enforcement of the Standards for public school buildings is required by Title 24, Part I administrative regulations of DSA. The Standards add requirements for schools that are the same as those applicable to all nonresidential buildings. The Standards also recognize the unique characteristics of relocatable public school buildings, and establish requirements and procedures to facilitate compliance and enforcement for relocatables. The Standards for schools are cost effective and will reduce the costs of building and operating school buildings over their useful life.

ESTIMATE OF COST OR SAVINGS  
Form 399

- A. Cost or Savings to any state agency: Buildings owned and occupied by State agencies are required to comply with the Standards as any other nonresidential building. State agencies will benefit from reduced energy bills that more than pay for the costs of the Standards.
- B. Cost to any local agency required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: The Standards do not result in new mandates to local agencies. Buildings owned and occupied by local agencies are required to comply with the Standards as any other nonresidential building. Local agencies will benefit from reduced energy bills that more than pay for the costs of the Standards.
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: School buildings are covered by the Standards and the Administrative regulations of the DSA require public school buildings to comply. Costs are not required to be reimbursed. Schools will benefit from reduced energy bills that more than pay for the costs of the Standards.
- D. Other nondiscretionary cost or savings imposed on local agencies: No.
- E. Cost or savings in federal funding to the state: No.

INITIAL DETERMINATION OF NO  
SIGNIFICANT STATEWIDE ADVERSE  
ECONOMIC IMPACT ON BUSINESSES

- A. Identification of the types of businesses that would be affected.

The Standards will require cost effective energy efficiency measures for nonresidential buildings other than institutional occupancies. The Standards require a change in practice and the retraining of employees of businesses that are involved in the design and construction of buildings, and in compliance analysis and documentation, and field verification. The cost of changes in practice and retraining will ultimately be borne by the beneficiary of the Standards, the entity paying reduced energy bills.

- B. A description of the projected reporting, record keeping, and other compliance requirements that would result from the proposed action.

Most reporting, record keeping, and compliance duties associated with the Standards do not change. New acceptance requirements for nonresidential buildings will formalize and standardize documen-



tation, but these requirements exist in a less structured way in the current Standards. Documentation authors who specify measures requiring field verification will need to notify a HERS provider, but this notification can be done by phone or electronically in very little time. Documentation related to low-rise residential buildings will decreased due to the merger of the CF-1R and C-2R forms.

Since look-up tables will be used for determining assembly U-factors, U-factor calculations will be eliminated. Documentation of compliance similar to that used for two decades for indoor lighting will be required of outdoor lighting. This documentation is necessary to meet the energy savings and public welfare benefits to California expected by the urgency passage of the SB 5X requirement for outdoor lighting standards.

The California Energy Commission has made an initial determination that the adoption of these updated Standards and regulations will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states.

#### DECLARATION OF EVIDENCE

The basis for the Commission's finding is that the Standards requirements are cost effective, and therefore will have a beneficial economic impact on the owners and occupants of buildings built to comply with the Standards. Evidence for the cost effectiveness of the Standards requirements are contained in the "Documents Relied Upon" listed in the Initial Statement of Reasons and on the Commission's website.

#### FINDING OF NECESSITY FOR THE PUBLIC'S HEALTH, SAFETY, OR WELFARE

The Legislature in directing the California Energy Commission to develop these Standards on an urgency basis has determined that they are necessary for the welfare of the public. In proposing the adoption of the specific requirements of the Standards, the Commission finds that the specific requirements are necessary for the health, safety and welfare of the public.

#### COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The California Energy Commission has determined that energy bill savings substantially in excess of compliance costs will be received by private persons and businesses.

#### ASSESSMENT OF EFFECT OF REGULATIONS UPON JOBS AND BUSINESS EXPANSION, ELIMINATION OR CREATION

The California Energy Commission has assessed whether or not and to what extent this proposal will affect the following:

- The creation or elimination of jobs within the State of California.

It is possible that new jobs may be created due to adoption of the Standards, including approval of new compliance options, and may result from reduced operating costs due to energy bill savings.

- The creation of new businesses or the elimination of existing businesses within the State of California.

It is possible that new businesses will be created to provide field verification and other contractor services and to supply energy efficiency products.

- The expansion of businesses currently doing business with the State of California.

It is likely that businesses currently doing business in California to provide compliance related services and products will be expanded.

#### INITIAL DETERMINATION OF SIGNIFICANT EFFECT ON HOUSING COSTS

The California Energy Commission has made an initial determination that this proposal would have a significant effect on housing costs. Homeowners and occupants will be the beneficiaries of energy bill savings substantially in excess of compliance costs making housing more affordable.

#### CONSIDERATION OF ALTERNATIVES

The California Energy Commission has determined that no reasonable alternative considered by the state agency or that has otherwise been identified and brought to the attention of the Commission would be more effective in carrying out the purpose of the proposed Standards or would be as effective and less burdensome to affected private persons than the proposed Standards.

#### AVAILABILITY OF RULEMAKING DOCUMENTS

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review at the Commission's Dockets Office, by contacting the persons named below, or on this website:

[www.energy.ca.gov/2005\\_standards/rulemaking](http://www.energy.ca.gov/2005_standards/rulemaking)

Interested parties may obtain a copy of the Final Statement of Reasons once it has been prepared by making a written request to the contact persons named below or through this website.



**ENERGY COMMISSION CONTACT PERSON  
FOR PROCEDURAL AND  
ADMINISTRATIVE QUESTIONS**

General questions regarding procedural and administrative issues should be addressed to

Bryan Alcorn, Contract Manager  
CALIFORNIA ENERGY COMMISSION  
1516 Ninth Street, MS-25  
Sacramento, CA 95814  
(916) 654-4222  
Email: [balcorn@energy.state.ca.us](mailto:balcorn@energy.state.ca.us)

**CONTACT PERSON FOR SUBSTANTIVE  
AND/OR TECHNICAL QUESTIONS ON  
THE PROPOSED CHANGES TO  
BUILDING STANDARDS**

Specific questions regarding the substantive and/or technical aspects of the proposed changes to the building standards should be addressed to:

Bryan Alcorn  
CALIFORNIA ENERGY COMMISSION  
1516 Ninth Street, MS-25  
Sacramento, CA 95814  
(916) 654-4222  
Email: [balcorn@energy.state.ca.us](mailto:balcorn@energy.state.ca.us)

If Mr. Alcorn is not available, contact:

Elaine Hebert  
CALIFORNIA ENERGY COMMISSION  
1516 Ninth Street, MS-25  
Sacramento, CA 95814  
(916) 654-4800  
Email: [ehebert@energy.state.ca.us](mailto:ehebert@energy.state.ca.us)

**WRITTEN COMMENT PERIOD/AVAILABILITY  
OF DOCUMENTS/CONTACT PERSONS**

This rulemaking proceeding is scheduled to start with the publication of this Notice of Proposed Action (NOPA) by August 8, 2003. Any interested person may comment, either orally or in writing, until the adoption hearing scheduled October 8, 2003, or up to the date of final adoption if it is later. Please submit written comments to the dockets office at:

CALIFORNIA ENERGY COMMISSION  
Attention: Docket No. 03-BSTD-1  
Dockets Office

1516 Ninth Street, MS-4  
Sacramento, CA 95814

Comments may also be filed electronically by emailing [balcorn@energy.state.ca.us](mailto:balcorn@energy.state.ca.us) or FAXing them to 916/654-4304.

**CONTACT PERSONS FOR OTHER ASSISTANCE**

For assistance in participating in the rulemaking proceeding, please contact the Commission's Public Adviser, Roberta Mendonca, at (916) 654-4489, toll free (800) 822-6228, or by email at [pao@energy.state.ca.us](mailto:pao@energy.state.ca.us).

If you have a disability and require special accommodations, please contact Lou Quiroz at (916) 654-5146 (five days prior to the public hearing).

**POST-HEARING MODIFICATIONS TO THE  
TEXT OF THE REGULATIONS**

Interested persons should be aware that any of the provisions of the amendments under consideration by the Commission could be substantively changed as a result of public comment, staff recommendations, or conclusions of the Commission's Energy Efficiency Committee. Also, additional language not indicated in the Express Terms could be added if it is within the scope of the rulemaking proceeding. If the Commission makes substantive changes to the Express Terms, it will make the full text of the modified amendments available to the public at least 15 days before adoption, as required by Government Code 11346.8.

**FINAL STATEMENT OF REASONS**

If the proposed amendments are adopted, the Commission will prepare a Final Statement of Reasons. This document will update the Initial Statement of Reasons and respond to public comments. This document can be obtained after the conclusion of the rulemaking by contacting Chris Fultz at (916) 654-4064 or by email at [cfultz@energy.state.ca.us](mailto:cfultz@energy.state.ca.us).

**WEBSITE INFORMATION**

The Initial Statement of Reasons, Express Terms, this Notice, and any 15-day language issued subsequently can be accessed at the Commission's website at [www.energy.ca.gov/2005\\_standards/rulemaking](http://www.energy.ca.gov/2005_standards/rulemaking).

**GENERAL PUBLIC INTEREST**

**DEPARTMENT OF FISH AND GAME**

**CESA CONSISTENCY DETERMINATION FOR  
Contra Costa and Pittsburg Power Plants  
Contra Costa County**

On July 21, 2003, Mirant Delta, LLC ("Mirant") notified the Department of Fish and Game ("Department") that Mirant proposes to rely on the biological opinions prepared by the National Marine Fisheries Service ("NOAA Fisheries") and the U.S. Fish and Wildlife Service ("USFWS") to carry out a project that could adversely affect aquatic species protected

under both the federal Endangered Species Act and California Endangered Species Act ("CESA"). The project is continued operation, maintenance, and repair activities at the Contra Costa and Pittsburg Power Plants located on the San Joaquin River and Suisun Bay in Contra Costa County. The project also includes the deployment and operation of an aquatic filter barrier at the Contra Costa Power Plant.

On October 17, 2002, NOAA Fisheries issued to the U.S. Army Corps of Engineers ("Corps") a "no jeopardy" biological opinion (SWR-02-SA-6055:SRB) for Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*) and Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*). On November 4, 2002, USFWS issued the Corps a biological opinion (1-1-01-F-0280) for delta smelt (*Hypomesus transpacificus*). The biological opinions authorize incidental take and set forth measures that must be undertaken by Mirant to minimize and mitigate the project's effects on listed species.

Pursuant to Fish and Game Code section 2080.1, Mirant is requesting that the Department determine that the biological opinions are consistent with CESA. If the Department determines that the federal biological opinions are consistent, Mirant will not be required to obtain a separate incidental take permit under Fish and Game Code section 2081 for the project.

## DEPARTMENT OF FISH AND GAME

### CESA CONSISTENCY DETERMINATION FOR KLM Pipeline Repair Project, ChevronTexaco Contra Costa County

The Department of Fish and Game ("Department") received notice on July 17, 2003 that the Chevron-Texaco Pipeline Company proposes to rely on consultations between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act ("CESA"). This project consists of repair of the Kettleman Los Medanos (KLM) pipeline at Mile Post 161.85. The activities include excavating the existing pipeline to uncover the point of defect, which will impact approximately 2.2 acres of habitat for San Joaquin Kit Fox.

The U.S. Fish and Wildlife Service, on June 27, 2003, issued to the Office of Pipeline Safety Research and Special Programs Administration a no jeopardy Federal Biological Opinion (1-1-03-F-0208) which considers the Federally endangered and State threatened San Joaquin kit fox (*Vulpes macrotis mutica*) and authorizes incidental take.

Pursuant to California Fish and Game Code Section 2080.1, ChevronTexaco Company is requesting a determination on whether the Federal Biological Opinion 1-1-03-F-0208 is consistent with CESA.

If the Department determines that the Federal Biological Opinion is consistent with CESA, Chevron-Texaco Company will not be required to obtain an incidental take permit under CESA (Fish and Game Code Section 2081(b)) for the proposed project.

## DEPARTMENT OF FISH AND GAME

### CESA CONSISTENCY DETERMINATION FOR North Bay Aqueduct/Settlement Agreement Solano County

On June 25, 2003, the Department of Water Resources ("DWR") notified the Department of Fish and Game ("Department") that DWR proposes to rely on the biological opinions prepared by the National Marine Fisheries Service ("NMFS") and the U.S. Fish and Wildlife Service ("USFWS") to carry out a project that could adversely affect aquatic species protected under both the federal Endangered Species Act and California Endangered Species Act ("CESA"). The project is the delivery of water through the North Bay Aqueduct to the Cities of Fairfield, Vacaville, and Benicia ("cities") in accordance with the terms of a settlement agreement among DWR, the Solano County Water Agency, and the cities.

On February 12, 1993, NMFS issued to the U.S. Bureau of Reclamation ("USBR") a "no jeopardy" biological opinion for Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), and on September 20, 2002, issued a "no jeopardy" biological opinion (SWR-01-SA-5667:BFO) for Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*). On March 6, 1995, USFWS issued USBR a biological opinion (1-1-94-F-70) for delta smelt (*Hypomesus transpacificus*). The biological opinions cover USBR's operation of the Central Valley Project. DWR received letters of concurrence from USFWS and NMFS that the project is covered by and consistent with their biological opinions.

Pursuant to Fish and Game Code section 2080.1, DWR is requesting that the Department determine that the biological opinions are consistent with CESA. If the Department determines that the federal biological opinions are consistent, DWR will not be required to obtain a separate incidental take permit under Fish and Game Code section 2081 for the project.

**DEPARTMENT OF FISH AND GAME****CONSISTENCY DETERMINATION****Fish and Game Code 2080.1****Tracking Number 2080-2003-013-BD**

**PROJECT:** Sacramento Deep Water Ship Channel  
Fish Passage Facilities Project

**LOCATION:** W.G. Stone Lock in West Sacramento,  
Yolo County California

**NOTIFIER:** Department of Water Resources  
(DWR)

**BACKGROUND**

On July 29, 2002 the U.S. Fish and Wildlife Service (Service) issued Biological Opinion 1-1-02-F-0167 to the U.S. Army Corps of Engineers ("Corps") for the Fish Passage Study by the Department of Water Resources at the W.G. Stone Lock in West Sacramento, Yolo County, California, describing the project actions and setting forth conditions with which DWR must comply in order to minimize the study's impacts on delta smelt (*Hypomesus transpacificus*) and its habitat. On May 15, 2003 NOAA Fisheries issued permit 1401 to DWR under the authority of Section 10 of the Federal Endangered Species Act, describing the project actions and setting forth conditions with which DWR must comply in order to minimize the study's impacts on Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*), and Central Valley steelhead (*Oncorhynchus mykiss*). These species are listed under the California Endangered Species Act, Fish and Game Code sections 2050 et seq (CESA). On June 19 2003, the Director of the Department of Fish and Game (Department) received a notice from Michael Spear of DWR requesting a determination pursuant to Fish and Game Code section 2080.1 that the Federal biological opinion and the NOAA Fisheries permit are consistent with CESA for the proposed fish study.

The Sacramento Deep Water Ship Channel (SDWSC) traverses the Northwest quadrant of the legal Sacramento-San Joaquin Delta from near Pittsburg, CA to the Port of Sacramento, Ca. Since 1963, the SDWSC has provided ocean-going vessels with an avenue deep enough to enter the Port of Sacramento. The constructed portion of the SDWSC branches off of Cache Slough near Ryer Island and extends 25 miles to West Sacramento where a 1 ½ mile-long barge canal connects the SDWSC with the Sacramento River. At the upstream end of the canal is the William G. Stone Navigation Lock (Lock). The Lock facilitated barge passage in the earlier years of the ship channel's operation. Regular operation of the Lock ceased in 1982 when the Corps put the Lock in

caretaker status due to low commercial use. The City of Sacramento operated the Lock occasionally for recreational boating until 1987. From 1987 to 1999, the Lock gates were only opened for maintenance and inspection. Since 2000, the Lock has been on inactive status. With this new status, the federal government only spends funds on this facility for public safety reasons. The Lock's general disuse provides an opportunity to study a barrier scenario similar to the Delta Cross Channel (DCC) in the Sacramento-San Joaquin Bay-Delta or any future through Delta facilities. At present, there is a lack of detailed information on how different species in the Delta respond to migration barriers and how they react to fish passage facilities.

The primary goals of the project are to design, implement, and evaluate fish passage technologies in the Lock and determine the conditions needed to move upstream migrating fish of concern, including non-salmonid species, into and through the Lock.

**DETERMINATION**

The Department of Fish and Game (Department) has reviewed the proposed project description, the U.S. Fish and Wildlife Service (Service) biological opinion, the NOAA Fisheries Section 10 Permit, and other relevant documents. Based on this review, the Department has determined that for the proposed action (sampling for fish species at the Lock) the Service biological opinion and the NOAA Fisheries permit are consistent with CESA because the project meets the conditions set forth in Fish and Game Code section 2081(a) for authorization of take of species protected under CESA for scientific, educational, or management purposes. The project is not likely to jeopardize delta smelt, Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, or Central Valley steelhead or result in destruction or adverse modification of the corresponding critical habitats if the measures described in the biological opinion, the project description, and the NOAA Fisheries permit are implemented. These measures include, but are not limited to:

1. To reduce stressors on the fish species, species specific gear such as a trammel net and a purse seine shall be used to capture the fish. To expedite the removal of fish from the trammel net, this net shall be outfitted with a bright orange float line that will alert the crew if a fish has struck the net. At this point, the crew shall promptly check the net and remove fish. Both the gill net and the trammel net shall not be in the water longer than 20 minutes at a time. A purse seine net shall be used to capture delta smelt. Although it is thought delta smelt do not survive capture well, purse seine type nets have been used to successfully retrieve smelt from the wild for captive research studies.



2. Smelt shall be processed and released back into the water as soon as possible. Smelt shall not be placed into salted water after they are removed from the nets; these fish shall be returned to the channel or river as soon as possible after identifying and measuring. These fish shall not be released back into an area that will be immediately re-sampled to minimize the number of recaptures.
3. The condition of each delta smelt returned to the water shall be recorded (e.g., healthy and vigorous, lethargic, loss of equilibrium, how close to spawning, noticeable lesions, etc.). If the fish are dead, or it is obvious they will die, then the individual shall be preserved in accordance with standard practices stated in the July 29, 2002 biological opinion for this project.
4. Once the take of delta smelt exceeds 200 individuals total or 20 individuals per day, sampling shall stop and the Service shall be contacted to determine if the study should continue.
5. Endangered Species Act (ESA)/CESA-listed fish must be handled with care and kept in water to the maximum extent possible during sampling and processing procedures. Adequate circulation and replenishment of water in holding units are required.
6. When using gear that captures a mix of species, listed fish must be processed first and be released as soon as possible after being captured to minimize the duration of handling stress.
7. Prior to implementation, the plan for the pilot study to tag small fish shall be submitted to the Service for approval. If the pilot study results in high mortalities, the pilot study may be postponed or cancelled at the discretion of the Service. Delta smelt shall only be tagged after this pilot study plan is approved by the Service.
8. The Sacramento Fish and Wildlife Office (SFWO) shall be notified within twenty-four (24) hours of the finding of any injured or dead delta smelt or any unanticipated harm to their habitat as a result of biological sampling activities. Notification shall be in accordance with the reporting requirements in the U.S. Fish and Wildlife Service biological opinion dated July 29, 2002, for this project.
9. In the event that the authorized level for take is exceeded or if circumstances indicate that such an event is imminent or if any ESA/CESA-listed species not included in this permit is killed, injured, or collected during the course of research activities, notification shall be made to NOAA Fisheries as soon as possible, but no later than two days after the event occurs. Notification shall be in accor-

dance with reporting requirements in the NOAA Fisheries permit 1401 dated May 15, 2003 for this project.

10. For delta smelt, an annual report of activities shall be submitted to the SFWO by January 31 of each year this permit is in effect. The annual report shall include, but not be limited to: (1) a summary of significant research results; (2) maps and/or descriptions of locations sampled; (3) the results of all sampling efforts for delta smelt, including measurements and total numbers captured; (4) the condition of each delta smelt returned to the water; (5) numbers of listed species incidentally taken including salmonids, with dates, locations, circumstances, and depository receiving the preserved specimen(s); (6) other pertinent observations made during sampling efforts regarding the status or ecology of the species; and (7) planned future activities if authorized under this permit. If no activities occurred over the course of a year, indication of such shall be submitted as an annual report.
11. For Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, and Central Valley steelhead, an annual report of activities shall be submitted to NOAA Fisheries by October 1 of each year this permit is in effect, and a final report summarizing the results of research and the success of the research relative to its goal shall be submitted to NOAA Fisheries within 90 days of the expiration of the NOAA Fisheries permit for this project.

Although not a condition of the Service biological opinion or the NOAA Fisheries permit, the Department requests that copies of notifications, study plans, and annual reports be submitted to Ms. Anna Holmes at the Department's Central Valley Bay Delta Branch, 4001 N Wilson Way, Stockton, Ca 95205, by phone, (209) 948-7800, or by email, [aholmes@delta.dfg.ca.gov](mailto:aholmes@delta.dfg.ca.gov).

Pursuant to Section 2080.1 of the Fish and Game Code, the Department determines that the Service biological opinion for delta smelt, and the NOAA Fisheries permit 1401 for Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, and Central Valley steelhead are consistent with CESA, therefore no further take authorization under CESA is required. Any substantive changes to the project as described in the biological opinions will require the notifier to obtain a new consistency determination or a CESA incidental take permit from the Department.



## DEPARTMENT OF TOXIC SUBSTANCES CONTROL

### NOTICE TO INTERESTED PARTIES

#### DTSC SEEKS JUDICIAL APPROVAL OF THREE SUPERFUND SETTLEMENT AGREEMENTS WITH RESPECT TO THE CAL COMPACT LANDFILL SITE IN CARSON, CALIFORNIA

The Department of Toxic Substances Control ("DTSC") has entered into three Consent Decrees with Respect to the Cal Compact State Superfund Site ("Site") in the City of Carson.

#### SITE HISTORY

From 1959 until approximately 1968, Cal Compact, Inc. operated a Class II landfill at the Site, which occupies 157 acres next to the San Diego (405) Freeway. During these operations, the landfill accepted at least 300,000 cubic yards of hazardous waste. DTSC is the state agency responsible for securing a cleanup of the Site.

Consistent with federal regulations, DTSC divided the Site into two cleanup phases, or operable units ("OUs"). The first OU, known as the "Upper OU" includes the (i) the soil at the Site; (ii) the waste zone, which contains the buried landfill waste, and (iii) the Bellflower Aquitard, which is the body of groundwater immediately beneath the Site. The second OU, known as the "Lower OU," consists of the bodies of groundwater beneath the Bellflower Aquitard. At DTSC's request, BKK Corporation prepared a Draft Remedial Action Plan ("RAP") for the Upper OU and, on October 25, 1995, DTSC approved a Final RAP for the Upper OU.

The Original Decree. In 1997 the U.S. District Court approved a Consent Decree (the "Original Decree") between DTSC and two entities that had recently purchased the Site, Commercial Realty Projects, Inc. ("CRP") and L.A. Metromall, LLC ("LAM"). The Original Decree required CRP and LAM to pay a portion of DTSC's costs and to pay \$26,011,000 to fund the implementation of the approved RAP for the Site's Upper OU. In return, CRP and LAM received covenants not to sue from DTSC and contribution protection. The Original Decree also resolved the claims that DTSC had asserted against CRP and LAM in the matter entitled *California DTSC v. Commercial Realty Projects, Inc.*, No. 95-8773 MRP (MANx) (C.D. Cal.).

In 2001, the District Court entered additional Consent Decrees with respect to the Site, including the following:

The 2001 Supplemental Decree. The parties to this Decree are DTSC, CRP and LAM. Its main provisions are:

- (a) The date by which CRP and LAM are to provide the cleanup funding required by the Original Decree was extended to September 30, 2001.
- (b) CRP and LAM agreed that before commercial development is commenced at the site, the Site owners will provide financial assurances that the RAP for the Upper OU will be fully implemented, regardless of the cost.

CRP and LAM are in the process of marketing the Site to a developer who will perform the cleanup. As a result they sought and received an additional extension of the date for providing the cleanup funding. In return for this additional extension, CRP and LAM agreed to install certain gas collection systems at the Site. CRP and LAM have now requested a further extension of the funding date.

The 2001 Defense Group Decree. The "Defense Group Decree" resolved the outstanding Site-related claims among (1) DTSC, (2) CRP and LAM and (3) a group of oil and chemical companies (the "Defense Group") that sent industrial waste to the Site. Under this Decree, (i) the Defense Group paid \$ 2 million to CRP and LAM to reimburse them for response costs they incurred; (ii) the Defense Group paid \$ 2 million into a Site Specific Account, that has been established pursuant to Health & Safety Code section 25330.4, for use with DTSC's approval for future Site-related cleanup costs; (iii) in addition to these payments, the Defense Group guaranteed that at least \$ 6 million of the amount it recovers in contribution actions against third parties ("Third Party Contribution Actions") will be deposited into the Site Specific Account; (iv) the Defense Group prepared a draft RAP for the Lower OU, based on studies that the Defense Group undertook; and (v) the Defense Group agreed that any future recoveries it receives from its Third Party Contribution Actions will be divided between the Defense Group and the Site Specific Account pursuant to a specific formula.

#### THE THREE CURRENT DECREES

DTSC has entered into the following three additional Consent Decrees with respect to the Site and these Decrees have been lodged with the United States District Court:

- (1) The Municipal Consent Decree. This Decree resolves DTSC's claims against the following thirty-six settling municipalities: The Cities of Bell, Bellflower, Buena Park, Commerce, Comp-

ton, Cudahy, Culver City, Downey, El Segundo, Gardena, Hawthorne, Hermosa Beach, Huntington Beach, Huntington Park, Inglewood, Lakewood, Lawndale, Lomita, Long Beach, Los Alamitos, Los Angeles, Lynwood, Manhattan Beach, Maywood, Norwalk, Palos Verdes Estates, Paramount, Redondo Beach, Rolling Hills, Santa Ana, Santa Monica, Seal Beach, Signal Hill, South Gate, Torrance, and Vernon. In return these Cities will make payments of \$4,761,638.

- (2) **The County Consent Decree.** This Decree resolves DTSC's claims against the County of Los Angeles and five garbage disposal districts, namely, the Athens-Woodcrest-Olivita Garbage Disposal District; the Belvedere Garbage Disposal District; the Firestone Garbage Disposal District; the Malibu Garbage Disposal District; and the Walnut Park Garbage Disposal District. In return the County and the Districts make payments of \$2,400,000.
- (3) **The BKK Decree.** This Decree resolves DTSC's claims against BKK Corporation. In return, BKK agrees to (i) deposit \$135,000 into the Site Specific Account; and (ii) perform all the work required by the Lower OU RAP. This work will consist of groundwater monitoring activities. BKK can be reimbursed for these activities, at specified rates, up to a maximum of \$90,000, from the Site Specific Account. The Decree resolves BKK's liability for the Site, including the Upper and Lower OUs. BKK previously resolved a portion of its liability with respect to the Site in a 1995 Administrative Consent Order.

The total receipts resulting from these three decrees are:

Municipal Consent Decree:	\$ 4,761,638
County Consent Decree:	2,400,000
BKK Decree:	135,000
Total:	\$ 7,296,638

Pursuant to the formula established in the Defense Group Decree, these payments will be distributed as follows:

To the Site Specific Account:	\$ 6,148,319
To the Defense Group to reimburse a portion of its response costs:	\$ 1,148,319

Each of the Decrees provides the settling defendants with contribution protection and covenants not to sue.

#### COMMENTS BY INTERESTED PARTIES

Interested parties may obtain copies of the Consent Decrees by contacting Ms. Kimberly Kelley at (213) 897-2580. Written comments with respect to the Consent Decrees may be submitted to DTSC on or

before **September 1, 2003**. Such comments should reference the "Cal Compact State Superfund Site" and be directed to:

Mr. Thomas Cota, Chief  
Southern California Cleanup Operations Branch—  
Cypress  
Department of Toxic Substances Control  
5796 Corporate Avenue  
Cypress, CA 90630  
with a copy to:  
Mr. Dennis A. Ragen  
Deputy Attorney General  
110 West A Street, Suite 1100  
San Diego, California 92101

DTSC will review and respond to any timely comments. A copy of DTSC's response to the comments will be available for inspection at their offices in Cypress, California. DTSC has reserved the right to seek modifications in the Decrees, or to withdraw its consent to the Decrees if warranted in light of any comments received.

Further information regarding this matter may be obtained by contacting Kimberly Kelley, Senior Legal Analyst at the California Department of Justice, at (213) 897-2580.

#### CALIFORNIA REGULATORY REGISTER NOTICE ACTION DESCRIPTION FOR A POLYCHLORINATED BIPHENYL (PCB) OPERATIONS VARIANCE ISSUED BY THE STATEWIDE COMPLIANCE DIVISION, TRANSPORTATION SECTION, FOR SIERRA PACIFIC POWER COMPANY

On June 21, 2003, the Department of Toxic Substances Control (DTSC), granted a regulatory exemption variance to Sierra Pacific Power Company, a registered transporter of hazardous waste, to conduct PCB operations authorized under the California Code of Regulations, title 22, section 66263.44. The variance permits the grantee to transport PCB waste to a designated central collection facility. In lieu of a manifest, the transporter shall use a shipping paper which contains all the information required pursuant to the Code of Federal Regulations, title 49, part 172, subpart C. The hazardous waste must then be manifested to an authorized facility.

#### CEQA EXEMPTION

The project qualifies for a CEQA exemption under Public Resources Code Section 21080(b)(1), Ministerial Projects. This variance is issued pursuant to Chapter 13, Article 4, Section 66263.40 et seq. (Regulatory Exemptions for Certain Transportation Operations), that allows for five specific types of transportation requirement exemptions. Applicants must meet preset regulatory standards. In applying

these standards, DTSC only verifies specific facts regarding eligibility and may not add case-specific conditions.

The variance expires on July 31, 2004. For more information please call Maria Salomon of DTSC's Transportation Section at (916) 255-3624.

## PROPOSITION 65

### CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

#### SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65)

#### NOTICE OF INTENT TO LIST CHEMICAL

The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) provides two mechanisms for administratively listing chemicals which are known to the State to cause cancer or reproductive toxicity (Health and Safety Code Section 25249.8(b)). One such mechanism by which a chemical may be listed is if a body considered to be authoritative by the state's qualified experts has formally identified it as causing cancer or reproductive toxicity. The following are identified as authoritative bodies for purposes of Proposition 65 as it pertains to chemicals known to cause cancer: the U.S. Environmental Protection Agency, the International Agency for Research on Cancer, the U.S. Food and Drug Administration, the National Institute for Occupational Safety and Health, and the National Toxicology Program. The criteria for listing chemicals through the authoritative bodies mechanism are set forth in Title 22, California Code of Regulations (22 CCR), Section 12306.

As the lead agency for the implementation of Proposition 65, the Office of Environmental Health Hazard Assessment (OEHHA) of the California Environmental Protection Agency intends to list *fumonisin B<sub>1</sub>* as known to the State to cause cancer, pursuant to this administrative mechanism as provided in Health and Safety Code Section 25249.8(b) and 22 CCR, Section 12306.

Relevant information on *fumonisin B<sub>1</sub>* (CAS No. 116355-83-0) was requested in a notice published in the *California Regulatory Notice Register* on June 2, 2000 (Register 00, No. 22-Z). A public forum was held on July 11, 2000. OEHHA has determined that *fumonisin B<sub>1</sub>* meets the criteria for listing under 22 CCR, Section 12306, and therefore is issuing a notice of intent to list *fumonisin B<sub>1</sub>* under Proposition 65. A

document providing more detail on the basis for the listing of this chemical can be obtained from OEHHA's Proposition 65 Implementation Office at the address and telephone number indicated below, or from the OEHHA Web site at: <http://www.oehha.ca.gov/prop65.html>. Anyone objecting to the listing of *fumonisin B<sub>1</sub>* as causing cancer on the basis that there is no substantial evidence that the criteria for sufficiency of evidence as causing cancer specified in 22 CCR, Section 12306 have been satisfied should provide written comments in triplicate, along with supporting documentation, by mail or by fax to:

Ms. Cynthia Oshita

Office of Environmental Health Hazard Assessment  
Street Address: 1001 I Street

Sacramento, California 95814

Mailing Address: P.O. Box 4010

Sacramento, California 95812-4010

Fax No.: (916) 323-8803

Telephone: (916) 445-6900

Comments may also be hand-delivered to Ms. Oshita at the Office of Environmental Health Hazard Assessment at the same address.

**In order to be considered, comments must be postmarked (if sent by mail) or received at OEHHA (if delivered in person or sent by FAX) by 5:00 p.m. on Monday, September 8, 2003**

The following chemical has been determined by OEHHA to meet the criteria set forth in 22 CCR, Section 12306 for listing as causing cancer under the authoritative bodies mechanism:

Chemical	CAS No.	Toxicological Endpoint	Reference
Fumonisin B <sub>1</sub>	116355-83-0	Cancer	IARC (2002) NTP (2001)

#### REFERENCES

International Agency for Research on Cancer (IARC, 2002). *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans*. Volume 82: 301-366. *Some Traditional Herbal Medicines, Some Mycotoxins, Naphthalene and Styrene*. IARC, Lyon France.

National Toxicology Program (NTP, 2001). *Toxicology and Carcinogenesis Studies of Fumonisin B<sub>1</sub> (CAS No. 116355-83-0) in F344/N Rats and B6C3F<sub>1</sub> Mice (Feed Studies)*. NTP Technical Report Series No. 496, NIH Publication No. 01-3955. U.S. Department of Health and Human Services, Public Health Service, National Institutes of Health, NTP, Research Triangle Park, NC.



## **DECISION NOT TO PROCEED**

### **DEPARTMENT OF INDUSTRIAL RELATIONS**

#### **NOTICE OF DECISION NOT TO PROCEED**

Title 8, Chapter 8, Subchapter 2, Article 3 and 3.1

Pursuant to Government Code Section 11347, notice is hereby given that the Department of Industrial Relations has decided not to proceed with the amendment of Articles 3, 3.1 and 11, Sections 15210, 15210.1, 15210.2, 15216, 15220 through 15220.8 and 15430 of Title 8, Chapter 8, of the California Code of Regulations, regarding alternative composite deposit program.

This notice of proposed rulemaking was published in the California Regulatory Notice Register on February 21, 2003, Notice File No. Z-03-0211-07.

## **RULEMAKING PETITION DECISIONS**

### **CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD**

#### **NOTICE OF DECISION ON PETITION TO REPEAL REGULATIONS**

California Code of Regulations  
Title 14, Natural Resources  
Division 7

#### **PETITIONER**

Richard Leo Lymp's petition was received by the California Integrated Waste Management Board (Board) on June 23, 2003.

#### **AUTHORITY**

Under authority established in Public Resources Code section 40502, the Board may adopt regulations necessary to carry out the Integrated Waste Management Act. Public Resources Code section 43020 and 43021 authorize the Board to establish minimum standards for solid waste handling, transfer, composting, transformation and disposal, and to establish standards for the design, operation, maintenance and ultimate reuse of solid waste facilities.

#### **CONTACT PERSON**

Please direct any inquiries regarding this action to Michael Bledsoe, Senior Staff Counsel; by mail at California Integrated Waste Management Board, Le-

gal Office, 1001 I Street, Sacramento, CA 95812; by telephone at (916) 341-6058; by e-mail at [mbledsoe@ciwmb.ca.gov](mailto:mbledsoe@ciwmb.ca.gov).

#### **AVAILABILITY OF PETITION**

The petition for repeal of regulations is available upon request directed to the Board's contact person.

#### **SUMMARY OF PETITION**

Petitioner requests that the Board repeal the Construction and Demolition and Inert Debris Processing Tiered Regulations. Specifically, the petitioner contends that the regulations would allow hazardous wastes to be commingled with other non-hazardous wastes and that this would amount to a re-classification of hazardous waste to that of an inert waste.

#### **BOARD DECISION**

The Board denies the petition for the following reasons:

The regulations do not authorize hazardous wastes to be commingled with other non-hazardous wastes and they do not re-classify hazardous waste inert waste. The Board does not have authority to do either of these things and there are no provisions in these regulations that do so.

In fact, the regulations expressly define inert waste as not containing hazardous waste (14 CCR 17381(k)) and expressly prohibit the acceptance of hazardous waste at sites subject to these regulations (14 CCR 17383 incorporating, among other sections 14 CCR 17407.5).

## **SUMMARY OF REGULATORY ACTIONS**

### **REGULATIONS FILED WITH SECRETARY OF STATE**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

#### **BOARD OF OCCUPATIONAL THERAPY Ethical Standards of Practice**

This action would adopt as the Board's Ethical Standards of Practice, selected rules from the American Occupational Therapy Association's Code of Ethics, with the Board's own amendments.

Title 16  
California Code of Regulations  
ADOPT: 4170  
Filed 07/24/03  
Effective 08/23/03  
Agency Contact: Jeff Hanson (916) 322-3394

#### BOARD OF PHARMACY

##### Coursework from Non-Recognized Providers

In this regulatory action, the Board of Pharmacy amends a regulation relating to continuing education for pharmacists and the acceptance of coursework from non-recognized providers of continuing education under specified circumstances.

Title 16  
California Code of Regulations  
AMEND: 1732.2  
Filed 07/28/03  
Effective 08/27/03  
Agency Contact:  
Debbie Anderson (916) 445-5014

#### BOARD OF PILOT COMMISSIONERS

##### Training Program Eligibility List

This action specifies the procedure for eligible applicants to be notified of and accept or decline admission to the Board's training program.

Title 7  
California Code of Regulations  
AMEND: 213(i)  
Filed 07/23/03  
Effective 08/22/03  
Agency Contact:  
Captain Patrick A. Moloney (415) 397-2253

#### BOARD OF PODIATRIC MEDICINE

##### Continuing Education

This regulatory action amends the continuing education requirements for a doctor of podiatric medicine.

Title 16  
California Code of Regulations  
ADOPT: 1399.675 AMEND: 1399.669, 1399.670, 1399.676, 1399.678, 1399.679 REPEAL: 1399.675  
Filed 07/24/03  
Effective 08/23/03  
Agency Contact:  
Mischa Matsunami (916) 263-0315

#### COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

##### Reserve Officer Interview Requirements

This rulemaking amends the interview factors for the reserve peace officer selection process.

Title 11  
California Code of Regulations  
AMEND: 1007

Filed 07/28/03  
Effective 08/27/03  
Agency Contact: Leah Cherry (916) 227-3891

#### DEPARTMENT OF DEVELOPMENTAL SERVICES

##### Anticipated Rate Adjustments for In-Home Respite Agencies

This is the timely certification of compliance for the formal adoption of an amendment to the regulation that describes when a program change that could have been planned for will be sufficient to warrant an adjustment in the payment rate for an in-home respite services agency.

Title 17  
California Code of Regulations  
AMEND: 58420  
Filed 07/28/03  
Effective 07/28/03  
Agency Contact:  
Lorna White-Griffith (916) 654-2200

#### DEPARTMENT OF FOOD AND AGRICULTURE

##### Pierce's Disease Control Program

The regulatory action is the Certificate of Compliance for emergency regulations that established the Pierce's Disease Control Program. (Prior OAL Files 02-1009-02E and 03-0130-04EE. California Department of Food and Agriculture File PH0316.)

Title 3  
California Code of Regulations  
ADOPT: 3650, 3651, 3652, 3653, 3654, 3655, 3656, 3657, 3658, 3659, 3660, 3661, 3662, 3663, 3663.5  
Filed 07/28/03  
Effective 07/28/03  
Agency Contact: Stephen Brown (916) 654-1017

#### DEPARTMENT OF FOOD AND AGRICULTURE

##### Mexican Fruit Fly Interior Quarantine

This emergency action removes approximately 56 square miles in the vicinity of South Pasadena from the area quarantined to prevent the spread of the Mexican fruit fly.

Title 3  
California Code of Regulations  
AMEND: 3417(b)  
Filed 07/24/03  
Effective 07/24/03  
Agency Contact: Stephen Brown (916) 654-1017

#### DEPARTMENT OF FOOD AND AGRICULTURE

##### Requirements for the Movement of Sheep and Goat

This Certificate of Compliance establishes the interstate and intrastate movement requirements for sheep and goats and addresses the diseases that affect

them in order to protect healthy livestock and the agricultural industry in California.

Title 3

California Code of Regulations

ADOPT: 760, 760.1, 760.2, 760.3, 760.4, 760.5, 760.6, 760.7, 760.8, 760.9

Filed 07/29/03

Effective 07/29/03

Agency Contact: Thami Rodgers (916) 698-3276

DEPARTMENT OF MANAGED HEALTH CARE

Claims Settlement Practices

This regulatory action adopts claims settlement practices and dispute resolution procedures.

Title 28

California Code of Regulations

ADOPT: 1300.71, 1300.71.38

Filed 07/24/03

Effective 08/23/03

Agency Contact:

Lyn Amor Macaraeg (916) 322-9727

DEPARTMENT OF MANAGED HEALTH CARE

Ambulance Plans: Conditional Exemption

This action modifies the exemption from licensing under the Knox-Keene Health Care Service Plan Act for air and ground ambulance plans. This action is the resubmittal of previously withdrawn OAL file number 03-0409-02S.

Title 28

California Code of Regulations

AMEND: 1300.43.3

Filed 07/24/03

Effective 08/23/03

Agency Contact:

Lyn Amor Macaraeg (916) 322-9727

DEPARTMENT OF MOTOR VEHICLES

Driver License and Driver Licenses

This is an editorial, nonsubstantive action consolidating two articles into one by repealing an extraneous article heading and amending the remaining article heading. The change is editorial and nonsubstantive.

Title 13

California Code of Regulations

AMEND: 25.01

Filed 07/23/03

Effective 08/22/03

Agency Contact: John Urakawa (916) 657-9927

DEPARTMENT OF SOCIAL SERVICES

Interim Closure or Removal Pending Arrest Investigation

This emergency regulatory action adopts procedures for an interim closure of or removal from a licensed child care facility pending an investigation of a licensee's arrest.

Title 22, MPP

California Code of Regulations

AMEND: 101170, 102370

Filed 07/24/03

Effective 07/24/03

Agency Contact:

Anthony J. Velasquez (916) 657-2586

DEPARTMENT OF SOCIAL SERVICES

CalWORKs 180-Day Family Reunification Extension

This emergency rulemaking action permits the parents of children who have been removed from the home and receiving out-of-home care to continue to receive CalWORKs funded services, such as substance abuse and mental health services, if the county determines such services are necessary for family reunification.

Title MPP

California Code of Regulations

AMEND: 40-181.1(e), 40-181.22, 42-710.6, 42-711-51, 42-721.1, 41, 44-314.1, 80-301(r), 82-812.6

Filed 07/29/03

Effective 07/29/03

Agency Contact:

Anthony J. Velasquez (916) 657-2586

FAIR POLITICAL PRACTICES COMMISSION

Termination of Committees

This action concerns the extension of time for termination of a candidate controlled committee organized for elective office. This action is exempt from OAL review and is being submitted for filing with the Secretary of State and printing only.

Title 2

California Code of Regulations

AMEND: 18404.1

Filed 07/29/03

Effective 07/29/03

Agency Contact: Holly Armstrong (916) 322-5660

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Lead

This action updates obsolete references to another CCR citation. Specifically, Title 17, section 35022 was renumbered to section 35040, and the change was not picked up in these regulations.

Title 8

California Code of Regulations

AMEND: 1532.1

Filed 07/24/03

Effective 07/24/03

Agency Contact: Marley Hart (916) 274-5721



OCCUPATIONAL SAFETY AND HEALTH  
STANDARDS BOARD

Elevator Pits

This rulemaking action amends existing regulations to permit the installation of various water removal systems in elevator pits, to specify conditions that must be satisfied by a water removal system, to allow for human intervention in the operation and maintenance of a system, and to require the presence of authorized personnel when it is necessary to enter the pit to remove water accumulation.

Title 8

California Code of Regulations

AMEND: 3016, 3120.6, 2122.0

Filed 07/28/03

Effective 08/27/03

Agency Contact: Marley Hart (916) 274-5721

SPEECH-LANGUAGE PATHOLOGY AND  
AUDIOLOGY BOARD

License Status & History Certification Letter Fee

The regulatory action establishes the fee for issuance of a license status and history certification letter at \$10.00 .

Title 16

California Code of Regulations

AMEND: 1399.157

Filed 07/23/03

Effective 08/22/03

Agency Contact:

Annemarie Del Mugnaio (916) 263-2666

TECHNOLOGY, TRADE AND COMMERCE  
AGENCY

This emergency regulatory action modifies the terms and conditions of the bond and lines of credit guarantees issued by the Financial Development Corporations (FDC) on behalf of small businesses.

Title 10

California Code of Regulations

AMEND: 5002, 5009, 5010

Filed 07/29/03

Effective 07/29/03

Agency Contact: Glenn Stober (916) 324-9538

**CCR CHANGES FILED WITH THE  
SECRETARY OF STATE  
WITHIN MARCH 26, 2003  
TO JULY 30, 2003**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulation's titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on

a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

**Title 1**

07/01/03 AMEND: 1038

05/08/03 REPEAL: 121, 122, 123, 124, 125, 125.5, 126, 127, 128, App. A (Form 1013)

**Title 2**

07/29/03 AMEND: 18404.1

07/14/03 AMEND: 649.11

07/14/03 AMEND: 56800

07/14/03 AMEND: Chapter 55, Section 54400

07/07/03 ADOPT: 1859.77.3 AMEND: 1859.2, 1859.77.2

06/19/03 AMEND: 1859.2, 1859.20, 1859.21, 1859.74.2, 1859.74.3, 1859.74.4, 1859.75, 1859.75.1, 1859.78.3, 1859.79, 1859.81.1, 1859.83, 1859.107, 1859.145

06/16/03 ADOPT: 18530.2

06/13/03 ADOPT: 1859.160, 1859.161, 1859.162, 1859.162.1, 1859.163, 1859.164, 1859.164.1, 1859.165, 1859.166, 1859.166.1, 1859.167, 1859.168, 1859.169, 1859.170, 1859.171 AMEND: 1859.2, 1859.51, 1859.103, 1859.106, 1859.145.1

06/12/03 ADOPT: 18329.5

06/12/03 AMEND: 1859.77.2

06/12/03 AMEND: 1555

06/10/03 ADOPT: 18702.5 AMEND: 18702, 18702.1

06/04/03 ADOPT: 649.23, 649.24, 649.25

05/08/03 AMEND: 2970

05/07/03 AMEND: 547.80, 17030, 17111, 17112, 17151 REPEAL: 547.81, 17434

05/07/03 ADOPT: 471.1 AMEND: 470, 470.1, 471, 472, 17502, 17520

05/01/03 AMEND: 1859.61, 1859.105, 1859.106, 1859.141, 1859.142, 1859.145, 1859.147, 1859.148, 1859.150.1, 1859.151, 1859.152, 1859.153

04/28/03 AMEND: 1897

04/21/03 ADOPT: 1185.02, 1186 AMEND: 1181.1, 1183, 1183.01, 1185, 1185.01, 1185.02, 1185.1, Article 6 title. REPEAL: 1185.2, 1186, 1186.1, 1186.2, 1186.3, 1188.5

04/10/03 AMEND: 18313

04/09/03 ADOPT: 18550.1 AMEND: 18225.7

04/04/03 AMEND: 599.885

04/03/03 ADOPT: 23000, 23100, 23100, 23200, 23300

04/03/03 AMEND: 599.515

04/01/03 AMEND: 52.4

03/27/03 ADOPT: 18754

**Title 3**

07/29/03 ADOPT: 760, 760.1, 760.2, 760.3, 760.4, 760.5, 760.6, 760.7, 760.8, 760.9  
 07/28/03 ADOPT: 3650, 3651, 3652, 3653, 3654, 3655, 3656, 3657, 3658, 3659, 3660, 3661, 3662, 3663, 3663.5  
 07/24/03 AMEND: 3417(b)  
 07/10/03 AMEND: 3700(c)  
 07/08/03 AMEND: 3700(c)  
 07/03/03 ADOPT: 755, 755.1, 755.2, 755.3, 755.4, 755.5, 755.6, 756, 756.1, 756.2, 756.3, 757, 758, 758.1, 759 AMEND: 753.2 REPEAL: 757, 759, 759.1, 759.2, 759.3, 759.4, 759.5  
 06/26/03 AMEND: 3417(b)  
 06/12/03 AMEND: 3423(b)  
 06/03/03 AMEND: 3417  
 06/02/03 REPEAL: 796  
 05/28/03 ADOPT: 1392.12  
 05/22/03 AMEND: 6860  
 05/19/03 ADOPT: 6450, 6450.1, 6450.2, 6450.3, 6784 AMEND: 6000 REPEAL: 6450, 6450.1, 6450.2, 6450.3, 6784  
 05/05/03 ADOPT: 1310, 1310.1, 1310.2, 1310.3  
 04/24/03 AMEND: 6000, 6710  
 04/21/03 AMEND: 3423(b)  
 04/21/03 AMEND: 3417(b)  
 04/15/03 AMEND: 3423(b)  
 04/08/03 ADOPT: 760, 760.1, 760.2, 760.3, 760.4, 760.5, 760.6, 760.7, 760.9 REPEAL: 760, 765  
 04/07/03 AMEND: 3417(b)  
 04/03/03 AMEND: 300(c)  
 04/01/03 AMEND: 3417(b)  
 03/26/03 ADOPT: 797

**Title 4**

07/14/03 ADOPT: 10151, 10152, 10153, 10154, 10155, 10156, 10157, 10158, 10159, 10160, 10161, 10162  
 06/26/03 AMEND: 12100, 12101, 12104, 12105, 12120, 12122, 12124, 12126, 12128, 12130, 12132, 12140, 12142  
 06/16/03 ADOPT: 12370  
 05/22/03 ADOPT: 12300, 12301, 12302, 12304, 12305, 12306, 12307, 12308, 12309, 12310 AMEND: 12301, 12303, 12309  
 04/09/03 AMEND: 1467

**Title 5**

07/21/03 ADOPT: 1068-1074  
 07/18/03 ADOPT: 80473, 80473.1  
 07/03/03 AMEND: 51023.5  
 06/20/03 ADOPT: 13075  
 06/16/03 ADOPT: 9531, 9532  
 05/15/03 ADOPT: 24000, 24001, 24002, 24003, 24004, 24005, 24006, 24007, 24008, 24009

05/01/03 ADOPT: 1218.5 AMEND: 1200, 1204, 1209, 1211, 1212, 1215, 1216, 1217, 1217.5, 1219, 1219.5, 1220, 1225  
 04/21/03 ADOPT: 11990  
 04/15/03 AMEND: 18106  
 04/14/03 AMEND: 11510, 11512.5(a)(11), 11517 REPEAL: 11510(j)  
 04/07/03 ADOPT: 80020.1  
 04/03/03 ADOPT: 11971, 11972, 11973, 11974, 11975, 11976, 11977, 11978, 11979, 11980

**Title 7**

07/23/03 AMEND: 213(i)  
 06/03/03 AMEND: 201, 202, 203, 204, 208, 209, 210, 211, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222

**Title 8**

07/28/03 AMEND: 3016, 3120.6, 2122.0  
 07/24/03 AMEND: 1532.1  
 07/21/03 AMEND: 5557  
 07/11/03 AMEND: 1504, 1637  
 07/11/03 ADOPT: 5248, 5252.1, 5253.1, 5298.1, 5307, 5308 AMEND: 1504, 5236, 5237, 5238, 5239, 5240, 5241, 5242, 5243, 5244, 5245, 5246, 5247, 5251, 5252, 5253, 5254, 5256, 5257, 5258, 5262, 5267, 5268, 5269, 5270, 5276, 5277, 5278, 5279, 5280, 5291, 5292, 5293,  
 07/03/03 AMEND: 1635, 1710  
 07/03/03 ADOPT: 5006.1 AMEND: 5006  
 06/26/03 AMEND: 421, 422, 422.1, 423, 424.1, 424.2, 424.3, 424.4, 425.1, 425.2, 426, 427.1, 427.2, 427.3, 427.4, 428  
 06/12/03 ADOPT: 3195. 3195.2, 3195.3, 3195.4 3195.5, 3195.6, 3195.7, 3195.8, 3195.9, 3195.10, 3195.11, 3195.12, 3195.13, 3195.14  
 06/09/03 AMEND: 344.30  
 06/02/03 AMEND: 4821  
 05/30/03 ADOPT: 15220, 15220.1, 15220.2, 15220.3, 15220.4, 15220.5, 15220.6, 15220.7, 15220.8 AMEND: 15201, 15210, 15210.1, 15210.2, 15216, 15430  
 05/29/03 AMEND: 5161, 5164  
 05/27/03 AMEND: 5214  
 05/20/03 AMEND: 9785, 9785.2, 9785.3, 9786, 9787  
 05/07/03 ADOPT: 20400, 20401, 20402, 20403, 20404, 20405, 20406, 20407, 20408, 20450  
 05/01/03 AMEND: 10122, 10133.15, 10133.16  
 05/01/03 AMEND: 10106.1, 10107.1, 10111.2  
 04/09/03 AMEND: 15210  
 04/07/03 AMEND: 15251  
 03/26/03 AMEND: 3279, 3280

**Title 9**

06/19/03 ADOPT: 1840.112 AMEND: 1830.215  
 06/05/03 ADOPT: 880, 881, 882, 883, 884, 885,  
 886, 890, 891, 892  
 05/20/03 ADOPT: 7149.1 AMEND: 7174

**Title 10**

07/29/03 AMEND: 5002, 5009, 5010  
 07/21/03 ADOPT: 1709.1, 1717.2, 1730.1, 1737.1,  
 1737.2, 1738.6 AMEND: 1710, 1717.2,  
 1726, 1730, 1732.2, 1737, 1737.1,  
 1737.3, 1738, 1738.2, 1738.3, 1738.5,  
 1740.1, 1740.4, 1741.1  
 07/21/03 ADOPT: 2361  
 07/15/03 ADOPT: 2716.1, 2790.1.5, 2805.1.5  
 07/14/03 AMEND: 2190.05, 2190.7  
 07/14/03 ADOPT: 2020, 2021 AMEND: 250.51  
 07/11/03 ADOPT: 2194, 2194.1, 2194.2, 2194.3,  
 2194.4, 2194.5, 2194.6, 2194.7, 2194.8  
 07/03/03 AMEND: 2498.2  
 07/03/03 AMEND: 260.102.14  
 06/19/03 AMEND: 5.2001  
 06/10/03 ADOPT: 310.156.3 AMEND: 310.114.1  
 06/05/03 AMEND: 2695.2  
 06/03/03 ADOPT: 2615, 2615.1, 2615.2, 2615.3  
 AMEND: 2698.99.10, 2698.99.11,  
 2698.99.12, 2698.99.13  
 06/03/03 AMEND: 2509.40, 2509.41, 2509.42,  
 2509.43, 2509.44, 2509.45, 2509.46,  
 2509.47, 2509.48, 2509.49, 2509.50,  
 2509.51, 2509.52, 2509.53, 2509.54,  
 2509.55, 2509.56, 2509.57, 2509.58,  
 2509.59, 2509.60, 2509.61, 2509.62,  
 2509.63, 2509.64, 2509.65, 2509.66, 250  
 05/20/03 AMEND: 2699.100, 2699.200, 2699.201,  
 2699.202, 2699.205, 2699.206, 2699.207,  
 2699.210, 2699.300, 2699.301, 2699.303,  
 2699.304, 2699.400  
 05/06/03 ADOPT: 2498.6  
 04/29/03 ADOPT: 2192.1, 2192.2, 2192.3, 2192.4,  
 2192.5, 2192.6, 2192.7, 2192.8, 2192.9,  
 2192.10, 2192.11, 2192.12, 2192.13 RE-  
 PEAL: 01-0905-01E, 02-0129-02 EE,  
 02-0531-04 EE  
 04/24/03 ADOPT: 2278, 2278.1, 2278.2, 2278.3,  
 2278.4, 2278.5  
 04/24/03 ADOPT: 2695.85 AMEND: 2695.1,  
 2695.2, 2695.3, 2695.4, 2695.5, 2695.6,  
 2695.7, 2695.8, 2695.9, 2695.10,  
 2695.11, 2695.12, 2695.14  
 04/17/03 AMEND: 5002  
 03/27/03 AMEND: 260.211, 260.211.1

**Title 11**

07/28/03 AMEND: 1007  
 07/21/03 ADOPT: 1009, 1083 AMEND: 1001,  
 1070, 1071, 1082  
 07/08/03 AMEND: 1005

07/03/03 AMEND: 1081  
 06/26/03 AMEND: 1002  
 06/06/03 AMEND: 1053  
 06/02/03 AMEND: 1003  
 05/05/03 AMEND: 1005  
 04/07/03 AMEND: 1005, 1052, D-2  
 04/03/03 ADOPT: 977.52 AMEND: 977.20,  
 977.43, 977.44, 977.45, 977.50, 977.51

**Title 12**

05/29/03 AMEND: 3000

**Title 13**

07/23/03 AMEND: 25.01  
 07/18/03 AMEND: 330.02, 330.06, 330.20,  
 330.32, 330.42, 330.44, 330.46, 330.48  
 06/26/03 AMEND: 181.00  
 06/23/03 ADOPT: 150.04  
 06/16/03 ADOPT: 2480  
 05/12/03 ADOPT: 147.00  
 05/12/03 ADOPT: 2700, 2701, 2702, 2703, 2704,  
 2705, 2706, 2707, 2708, 2709, 2710  
 05/07/03 ADOPT: 82.00  
 05/06/03 AMEND: 1239  
 05/01/03 ADOPT: 2273.5 AMEND: 2260, 2261,  
 2262.6, 2263, 2272, 2273  
 04/17/03 AMEND: 115.07  
 04/17/03 ADOPT: 157.00  
 04/16/03 AMEND: 1956.8  
 04/14/03 AMEND: 2412(b)

**Title 14**

07/22/03 AMEND: 15053, 15064, 15092, 15112,  
 15130, 15152, 15378, and Appendix E  
 07/14/03 AMEND: 708  
 07/07/03 AMEND: 18464, 18465  
 06/30/03 AMEND: 230  
 06/26/03 AMEND: 791.7, 870.15, 870.17, 870.19,  
 870.21,  
 06/26/03 AMEND: 1.74  
 06/24/03 AMEND: 749.2  
 06/24/03 AMEND: 354, 360, 361, 362, 363, 364  
 06/23/03 ADOPT: 25050  
 06/19/03 AMEND: 7.00  
 06/17/03 AMEND: 7.50(b)(91.1)  
 06/16/03 AMEND: 122  
 06/10/03 AMEND: 601  
 06/06/03 AMEND: 852.60.1, 852.60.2, 852.60.3,  
 852.60.4, 852.61.1, 852.61.2, 852.61.3,  
 852.61.4, 852.61.5, 852.61.6, 852.61.7,  
 852.61.8, 852.61.9, 852.61.10, 852.61.11,  
 852.61.12, 852.62.1, 852.62.2, 852.62.3  
 06/05/03 ADOPT: 712  
 06/02/03 AMEND: 17946, 17949  
 05/30/03 ADOPT: 3704.1  
 05/28/03 ADOPT: 18456.4, 18460.1.1 AMEND:  
 18449, 18450, 18451, 18453, 18453.2,  
 18454, 18455, 18456, 18456.1, 18456.2,



18456.3, 18457, 18458, 18459, 18459.1,  
18459.2, 18459.3, 18460.1, 18460.2,  
18461, 18462, 18463, 18465 REPEAL:  
18452, 18457.1, 18460, 18464

05/22/03 AMEND: 11303, 11386

05/05/03 ADOPT: 11021

05/01/03 AMEND: 27.80

04/30/03 AMEND: 6504, 6578.4, 6600.1

04/30/03 AMEND: 791.7, 870.15, 870.17, 870.19,  
870.21, Form FG OSPR-1972

04/28/03 AMEND: 2930

04/17/03 AMEND: 11945

04/15/03 ADOPT: 3704.1

04/15/03 ADOPT: 1.39, 1.49, 27.83 AMEND:  
27.82

04/14/03 ADOPT: 1.92 AMEND: 671, 671.1

04/08/03 AMEND: 791.7

04/07/03 ADOPT: 4970.09 AMEND: 4970.00,  
4970.01, 4970.02, 4970.03, 4970.04,  
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